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Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1411

ADELA NANCY DEL VALLE and
MORRY S. FOX, *Petitioners*

v.

UNITED STATES OF AMERICA, *et al., Respondents*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

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PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

Petitioners Adela Nancy Del Valle and Morry S. Fox request that this Court issue a writ of certiorari to review a judgment of the United States Court of Appeals for the Fifth Circuit entered in this case on January 10, 1979.

OPINION BELOW

The opinion of the United States Court of Appeals for the Fifth Circuit is reported at 587 F.2d 699 (5th Cir. 1979). (Appendix A). This opinion and the Court of Appeals' judgment (Appendix B) affirmed peti-

tioners' convictions for mail fraud and conspiracy to commit mail fraud.

JURISDICTION

The judgment of the Court of Appeals (Appendix B) was entered on January 10, 1979. A timely-filed petition for rehearing filed on behalf of Adela Nancy Del Valle and Morry S. Fox was denied by the Court of Appeals in an order entered February 12, 1979. (Appendix C). The jurisdiction of this Court is invoked under 28 U.S.C. § 1254(1).

QUESTIONS PRESENTED

This petition seeks review of the Court of Appeals' construction and application of the co-conspirator declaration exception to the hearsay rule, which is now found in Rule 801(d)(2)(E), Federal Rules of Evidence (hereafter, "Rule 801(d)(2)(E)"). The questions presented are:

1. Whether the hearsay declarations of alleged co-conspirators detailing attempted subornation of grand jury witnesses by petitioners' co-conspirators were properly admitted against petitioners,

a. *Where* the main objects of the conspiracy to commit mail fraud as alleged in the indictment and as proved at trial had been achieved prior to the subornation and attempted subornation (*i.e.*, prior to the making of the hearsay declarations)?

b. *Where* the main objects of the conspiracy, as alleged in the indictment and as proved and argued by the prosecution at trial, did not encompass, envision or for their achievement depend upon subornation or attempted subornation of grand jury witnesses?

c. *Where* the co-conspirators were not alleged or shown to have agreed to conspire to conceal their activities by suborning or by attempting to suborn witnesses called to testify before the grand jury or otherwise?

d. *Where* there was no evidence to indicate by overt act or otherwise that the conspiracy to commit mail fraud as alleged in the indictment was still in existence at the time the co-conspirator hearsay declarations were made?

2. Whether the Court of Appeals correctly held that co-conspirator hearsay evidencing concealment attempts by a co-conspirator who sought to suborn grand jury witnesses was properly admitted against these petitioners, where the concealment hearsay was only determined by the Court of Appeals to be in furtherance of an unlimited and unidentified "continuing sequence of objectives," and where the Court of Appeals failed to determine whether such concealment hearsay was in furtherance of the main objective or main objectives of the conspiracy actually charged and where the main objectives of the charged conspiracy, as argued by the prosecutrix, were actually accomplished prior to the concealment attempts?

3. Whether the Court of Appeals correctly held that an implied conspiracy to conceal the conspiracy charged by subornation of grand jury witnesses is "necessitated" for "survival of an ongoing operation" therefore justifying admission of the concealment attempts against petitioners as "in furtherance" of the implied conspiracy to conceal, where such a conspiracy to conceal was not charged in the indictment, argued by the prosecutrix or supported by the evidence, and

where the main objectives of the conspiracy actually charged had been accomplished prior to the attempted concealment?

4. Whether the admission of the co-conspirator declarations in the circumstances of this case was reversible error?

FEDERAL RULE OF EVIDENCE INVOLVED

Rule 801(d)(2)(E), Federal Rules of Evidence, provides:

> "A statement is not hearsay if . . . [t]he statement is offered against a party and is . . . (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy."

The Federal Rules of Evidence, enacted into positive law by Congress on February 2, 1975 (P.L. 93-595), became effective July 1, 1975 and governed the trial of this case held between February 7 and March 4, 1977.

STATEMENT OF THE CASE

This criminal prosecution was commenced under an indictment returned August 27, 1976 (Appendix D) which alleges 104 counts of mail fraud in violation of 18 U.S.C. §§ 1341-1342 and one count of conspiracy to commit mail fraud in violation of 18 U.S.C. § 371. Petitioners were tried jointly with James A. Davis, II and Irving Curtis[1] and all defendants were convicted on all counts.

[1] Two other alleged co-conspirators, Joe L. Moore and William H. ("Shorty") Holton, were severed for reasons of health. Mary Hamilton, an indicted co-conspirator, plead guilty to one count of mail fraud and testified for the prosecution.

Count I charged that the defendants had been engaged in a scheme to defraud insurance carriers, automobile accident victims and the Florida Bar Association from January of 1972 until the return of the indictment. The indictment claimed that the defendants tried to induce automobile accident victims to institute claims against insurance carriers and to induce insurance carriers to pay such claims to the defendants and their clients by submitting false and inflated medical bills. (App. D at 18a.) The main object of the conspiracy, as expressed by the prosecutrix at trial, was

> ". . . to obtain money from these insurance companies by obtaining automobile and bus accident victims as clients and patients, and then by submitting to those insurance companies bills on behalf of these clients for services that were not actually rendered." (R. Vol. 10, p. 1891.)[2]

The indictment alleged that the respective defendants played the following roles in the claimed conspiracy: Co-defendant James Davis was an attorney who represented accident victims. He employed "runners" (co-defendant Irving Curtis and severed defendant William H. Holton) to obtain those accident victims as Davis' clients. (App. D at 19a.) Money was generated to pay the "runners" by cashing the insurance drafts. (App. D at 20a.) At the time of the scheme alleged, Florida's No Fault Insurance law provided that victims of automobile accidents could not sue the party responsible unless the victim incurred at least $1,000 in medical bills or unless the victim suffered other serious or permanent injuries as a result

[2] References ("R. — Vol. — p. —") are to the Record on Appeal, volume and page numbers. Portions of the Record on Appeal have been reproduced at Appendix E.

of the accident. (App. D at 20a.) Under the scheme as alleged, Davis, Holton, Curtis and Davis' office manager, Joe Moore, referred their clients to petitioner Dr. Morry S. Fox. Fox in turn would submit inflated medical bills to Davis for use in the insurance claim.

The indictment charged that in order to exceed the $1,000 threshold, Dr. Fox and his secretary, petitioner Nancy Del Valle, would prepare false medical bills on behalf of these accident victim patients, which bills would reflect charges for services allegedly never performed. (App. D at 20a-21a.) The indictment further claimed that petitioners Fox and Del Valle would prepare the bills, knowing that Davis and his staff intended to use them as a basis for making demands against insurance companies. (App. D at 20a-21a.) Alleged co-conspirators James Davis, Mary Hamilton, Joe Moore and others on Davis' staff would thereafter submit the false medical bills to insurance companies and use them as a basis for making demands for settlement. (App. D at 21a.) This in turn allegedly caused insurance carriers to issue drafts in payment of the fraudulent bills, the object of the alleged scheme. (App. D at 21a.)

The indictment (Counts 1 and 105) also alleged a conspiracy to mislead various insurance companies, accident victims and the Florida Bar between 1973 and 1975. (App. D at 22a.) The indictment, however, did not allege a conspiracy to conceal the conspiracy for which petitioners were indicted.[3] Further, there was no

[3] The concealment evidence did not come to petitioners' counsel's attention until moments before it was proferred through delivery of Jencks material at trial (App. E at 114a). Counsel noted that the concealment information (available to the prosecution months

evidence presented which showed that the co-conspirators agreed to conceal the falsity of past claims by attempting to suborn witnesses who might be called to testify before a grand jury. The only evidence of "concealment" was confined to the efforts of defendant Davis who was shown to have attempted to mislead various insurance and Florida Bar investigators in the period 1973 to 1975.

Counts 2 through 104 realleged the scheme described in Count 1 and set forth specific violations of the mail fraud statute (App. D at 24a.) Count 105 of the indictment charged the defendants with conspiracy to commit the previous offenses. The overt acts alleged in Count 105, and all acts alleged in the mail fraud counts, occurred prior to January 24, 1976. No evidence of other acts relating to the alleged scheme or conspiracy occurring at or after the time of the concealment attempts (the hearsay declarations) was adduced at trial although the indictment alleges broadly that the scheme continued until its return date (August 27, 1976).[4]

before the return of the indictment) "could have or should have been included as a part of one of the schemes or a part of the conspiracy itself . . ." in order that petitioners would have notice to defend against it. The Government did not dispute this observation. (App. E at 132a.)

[4] The Court of Appeals erroneously stated that Mary Hamilton testified that the "conspiracy was still operating" in August, 1976. (App. A at 8a.) However, Mary Hamilton only testified as follows:

"Q. Miss Hamilton, you have described the procedures that have been used in the office, concerning the bringing in of cases, the receipt of bills from Dr. Fox's office.

Now, when you left in August of 1976, was that procedure still being followed?

A. Yes it was." [*See* App. E at 118a.]

Over timely objection by petitioners' counsel (App. E at 107a-111a, 114a-118a, 120a, 124a, 127a, 129a),[5] the trial court allowed the prosecution to elicit hearsay testimony to the effect that co-conspirator James Davis paid money to, coached or otherwise sought to persuade witnesses to lie to the grand jury during its investigation in May, 1976. Specifically, co-conspirator Mary Hamilton testified following her plea of guilty that Davis instructed her to lie to the grand jury regarding the scheme charged in the indictment. (App. E at 119a-122a.) The Government relied heavily on Ms. Hamilton's testimony in detailing the scheme to the jury. (R. Vol. 3 at pp. 273-332.) Ms. Hamilton also testified that Davis made a cash payment to one Preston Wellons, a former Davis client whose case had long-since been settled, at the time Mr. Wellons was to appear before the grand jury. (App. E at 119a.) Mr. Harold Duke testified that during the grand jury investigation, co-conspirator Holton suggested he "talk to" Davis about a subpoena from the grand jury which Mr. Duke had recently received. (App. E at 127a, 130a.) Mr. Duke also testified that during the grand jury investigation, Davis offered him a sum of money at or about the time he (Mr. Duke) was to testify before the grand jury. (App. E at 130a-131a.)

There is no evidence in the record which reveals that false or inflated medical bills were solicited by Davis or submitted by Fox or Del Valle, or that insurance claims were paid, or that the "conspiracy was still operating" after January, 1976. The record does show, however, that on April 13, 1976 (prior to the concealment attempts) an extensive search and seizure was carried out at Dr. Fox's clinic, making it most *un*likely that the conspiracy alleged was in fact pursued or "still operating" after that date. (First Supplemental Record on Appeal, pp. 1-10.)

[5] Petitioners' counsel moved alternatively for severance or for a limiting instruction. Both requests were denied. (App. E at 115a.)

The trial court instructed the jury that it could consider this concealment evidence in determining petitioners' guilt in accordance with the Court's general instruction given early in the trial under which the jury was told that it must first decide whether petitioners were part of the conspiracy as alleged. (App. E at 111a-113a.) The trial court made no finding as to whether the hearsay evidence of concealment was in the course of and in furtherance of the main objectives of the conspiracy for which petitioners were indicted.[6]

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[6] In their main brief filed in the Court of Appeals, petitioners contended that the admissibility of the attempted concealment evidence should have been a matter for judicial determination under Rule 104(a), Federal Rules of Evidence, rather than a question of relevance and conditionally admissible under Rule 104(b). Appellant's Brief, p. 21, n. 4. *See* Weinstein, *Evidence*, ¶ 104[05](2) at pp. 104-43. This issue is presently under *en banc* reconsideration in the Fifth Circuit in *United States* v. *James*, 576 F.2d 1121 (5th Cir. 1978), *motion for reh. en banc granted* (August 7, 1978), although the Court of Appeals mistakenly understood that petitioners had not raised this issue and therefore concluded that their appeal would not be affected by the outcome in *James*. (App. A. at 6a, footnote 6.) Petitioners continue to contend here that the twin questions of whether the alleged concealment occurred during and in furtherance of the conspiracy charged should be decided by the trial court in all cases under Rule 104(a) and that the instructions to the jury in this case were accordingly in error. This Court's attention is respectfully invited to *United States* v. *Bell*, 573 F.2d 1040, 1044-1045 (8th Cir. 1978), where the Eighth Circuit sets forth definitive procedural steps required to be applied in the District Courts in that Circuit in all cases where admissibility of a co-conspirator's statement is at issue, "regardless of the charge or charges." 573 F.2d 1044-1045. Such guidelines would assist the correct enforcement of the limitations imposed by this Court on the admissibility of such statements, the principal issue raised in this petition (discussed post, pp. 10-19). Because the Rule 104(a) issue was not treated by the Court of Appeals, however, petitioners do not include it as a Question Presented in this petition. See *Labor Board* v. *Sears, Roebuck & Co.*, 421 U.S. 132, 163-164 (1975); *United States* v. *Lovasco*, 431 U.S. 783, 788, n. 7 (1977).

In its opinion, the Court of Appeals held that the hearsay declarations detailing the concealment by subornation attempts were admissible under Rule 801(d)(2)(E) because:

> "There are obvious distinctions between the conspiracy here and the one to which the *Krulewitch* [v. *United States,* 336 U.S. 440 (1948)] holding was applied. The first distinction involves the sequence of events. We are dealing with statements made not after but during the conspiracy's operation. Second, the conspiracy here was not aimed at accomplishing a single objective with a precise moment of termination. This conspiracy had a continuing sequence of objectives. Third, the role of Davis in the conspiracy necessitated that he protect it from those investigative agencies which threatened its continuation. He was its shield. His attempts to influence witnesses were not acts of concealment related only to a past objective. They were parts of continuing activity that was essential to and therefore in furtherance of the survival of an ongoing operation. . . . [C]oncealment is sometimes a necessary part of a conspiracy, so that statements made solely to aid the concealment are in fact made during and in furtherance of the charged conspiracy." (App. A at 9a.)

REASONS FOR GRANTING THE WRIT

I. The Court of Appeals' Holding In This Case Directly Conflicts With Prior Holdings of this Court Regarding Limitations on Admissibility of Co-conspirator Hearsay Declarations And Thus Also Misconstrues Rule 801(d)(2)(E), Federal Rules of Evidence.

A writ of certiorari should be granted in this case because the Fifth Circuit's opinion construes and applies an important Federal Rule of Evidence (Rule 801(d)(2)(E)) in a manner which is in conflict with

prior decisions of this Court upon which that Rule is based. Those prior decisions, principally[7] *Krulewitch* v. *United States,* 336 U.S. 440 (1948), and *Grunewald* v. *United States,* 353 U.S. 391 (1957), specifically limit the admissibility of hearsay declarations by co-conspirators to cases where the declarations were clearly made during the existence of the conspiracy *and* in furtherance of the conspiracy's main (or "central" or "chief") object or objects. The Court of Appeals' holding in this case is in conflict with these cases, and thus gravely misconstrues and misapplies Rule 801(d)(2)(E), in the following respects:

(1) *"Sequence of Objectives."* The Court of Appeals' holding that concealment evidence is admissible if in furtherance of an apparently endless and free-wheeling "continuing sequence of objectives" which are nowhere articulated (App. A at 9a) renders meaningless the "in furtherance" limitation and conflicts with this Court's holding in *Krulewitch* and *Grunewald, supra.* Those cases expressly hold that, to be admissible, co-conspirator hearsay declarations must be in furtherance of ascertained main (or "chief" or "central") object(s) of the conspiracy actually alleged and proved. By substituting its "continuing sequence of objectives" test for this Court's required inquiry into whether the hearsay declarations were made in furtherance of the main objectives of the conspiracy (in this case, already accomplished), the Court of Appeals has eliminated the "in furtherance" limitation. By thus expanding Rule 801(d)(2)(E), the Court of Appeals

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[7] *See also Dutton* v. *Evans,* 440 U.S. 74 (1970); *Fiswick* v. *United States,* 329 U.S. 211 (1946); *Lutwak* v. *United States,* 344 U.S. 604 (1952); *Wong Sun* v. *United States,* 371 U.S. 471 (1962).

is in conflict as well with decisions of this Court such as *Wong Sun* v. *United States,* 371 U.S 471, 490 (1962) in which the Court noted it has "consistently refused to broaden that very narrow exception" to the hearsay rule which admits co-conspirator declarations. 371 U.S. at 490. *See also Fiswick* v. *United States,* 329 U.S. 211, 217 (1946).

In *Krulewitch, supra,* the Court focused on the "central aim" of the "conspiracy charged in the indictment" (interstate transportation for prostitution) and held that a co-conspirator's hearsay declaration of another alleged conspirator's guilt was not admissible because it was not in furtherance of *that* aim. 336 U.S. at 442. Here, the indictment charged that the "objects" of the scheme were to (1) induce the insurance companies to pay claims on the basis of false and inflated medical bills, (2) reduce the inflated medical bills included in the settlement payments from the recovery actually allowed by the insurance carriers, and (3) "defraud the Florida Bar from conducting inquiries" into matters raised by Davis' clients. (App. D at 18a.) The prosecutrix claimed that the "object" of the conspiracy charged "was to obtain money from these insurance companies. . . ." (R. Vol. 10 at p. 1891.) As in *Krulewitch,* 336 U.S. at 442, these main objectives had been achieved long prior to the concealment attempts by Davis. Nevertheless, the Court of Appeals found the hearsay admissible under its newly-fashioned test of a "continuing sequence of objectives." (App. A at 9a.)

In *Grunewald, supra,* the Government contended that the "central aim" of the tax-evasion conspiracy there charged was to obtain "absolute immunity" from prosecution. 353 U.S. at 398-399. This Court recog-

nized there that the Government's theory would have produced an indefinitely extended conspiracy which would in turn "extend indefinitely the time within which hearsay declarations will bind co-conspirators." 353 U.S. at 402. The Court of Appeal's "continuing sequence of objectives" in this case creates the same predicate for unlimited admissibility of such hearsay. (App. A at 9a.) In *Grunewald,* however, the Court rejected the Government's theory and held that the "main objective" of the conspiracy (the obtaining of "no prosecution" rulings) provided the only point of reference for determining whether the concealment attempts (lying to auditors) were in furtherance of the conspiracy charged. 353 U.S. at 406. By thus confining the admissibility of the hearsay concealment evidence, the Court held inadmissible (*inter alia*) Grunewald's attempt to persuade his secretary not to talk to the grand jury. The hearsay evidence of subornation in the case at bar was inadmissible for exactly the same reason—*viz.,* the chief" or "main" objective of the conspiracy charged was, as in *Grunewald,* accomplished long before the attempts at subordination. The Court of Appeals' rationale of a limitless "sequence of objectives," while allowing the Court of Appeals to avoid this conclusion, is in direct conflict with the limitations on admissibility of co-conspirator hearsay established in *Krulewitch* and *Grunewald.*

(2) *"Implied"/"Necessary" Conspiracy to Conceal.* The Court of Appeals' holding that there existed an implied conspiracy to conceal under which it justified admission of the hearsay declarations conflicts with this Court's rejection of the "implicit conspiracy theory" in *Krulewitch, supra,* 336 U.S. at 444 and *Grunewald*

v. *United States, supra,* 353 U.S. at 405. If the Court of Appeals' decision in this case is allowed to stand, an implied and apparently endless conspiracy to conceal will be raised to "justify" the unrestricted use of co-conspirator hearsay in virtually every prosecution for conspiracy to commit mail fraud brought in the Fifth Circuit hereafter.

In *Grunewald,* in rejecting the Government's attempt to admit co-conspirator hearsay on the theory that there existed a "subsidiary" or implied conspiracy to conceal, this Court held:

> "The crucial teaching of Krulewitch and Lutwak [both *supra*] is that after the central criminal purposes of conspiracy have been attained, a subsidiary conspiracy to conceal may not be implied from circumstantial evidence showing merely that the conspiracy was kept a secret and that the conspirators took care to cover up their crime in order to escape detection and punishment.
>
> . . .
>
> "By no means does this mean that acts of concealment can never have significance in furthering a criminal conspiracy. But a vital distinction must be made between acts of concealment done in furtherance of the main criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime." 353 U.S. at 401-402, 405.

Under this holding, the Government's acknowledgement in *Grunewald* that the chief objectives of the charged conspiracy had been accomplished prior to the concealment attempts, 353 U.S. at 401, was fatal. To avoid this pitfall in the case at bar, the Court of Appeals found an apparently endless "continuing sequence of objectives" and, because of Davis' past frustration of investigations, found an implied conspiracy to conceal by subornation of grand jury witnesses. Yet, as in *Grunewald,* there is not a "shed of direct evidence . . . to show anything like an express original agreement among the conspirators to continue to act in concert to cover up . . . traces of the crime after its commission." 353 U.S. at 404. Indeed, under the Court of Appeals' theory,

> ". . . one conceivably could be bound by another's unauthorized and unknown commission of perjury, bribery of a juror or witness, or even putting an incorrigible witness out of the way." *Krulewitch* v. *United States, supra,* 336 U.S. at 456 (Jackson, J., concurring specially)

The Court of Appeals seeks to justify its resort to an implied conspiracy by finding it a "necessary part" of the conspiracy charged.[8] Plainly, however, the subor-

[8] The Court of Appeals relies principally upon its prior holding in *United States* v. *Diez,* 515 F.2d 892 (1975) for its conclusion that concealment was "a necessary part" of the conspiracy charged. *Id.* at 704. In *Diez,* a tax evasion conspiracy prosecution, the Court of Appeals sustained the admissibility of co-conspirator hearsay declarations made to Internal Revenue Service investigators. The Court in *Diez* concluded these declarations were admissible because the "central aim" of the conspiracy was to deceive the investigators into believing defendant's returns were truthful and accurate and filing the returns (as Diez contended) did not "fully accomplish the purpose of the main conspiracy." *Id.* 897-898. However, in *Diez* the audit was undertaken, and the post-filing concealment therefore made necessary, *before* the last alleged overt act occurred. *Id.* at 898. In addition, the Court of Appeals in *Diez* at least identified the "central objective" and noted that, since the audit of appellant's tax returns was in progress, that objective had not been achieved. Here, by contrast, the concealment activity took place months *after* the last alleged overt act. Further, the alleged and proved central objections of the conspiracy charged were also accomplished prior to the concealment attempts.

nation attempted was not necessary to the accomplishment of the conspiracy's main objective—obtaining money from insurance companies for falsely-inflated claims. Rather, as in *Grunewald,*

> ". . . More closely analogous to our case would be conspiring kidnappers who cover their traces after the main conspiracy is finally ended—i.e., after they have abandoned the kidnapped person and then take care to escape detection. In the latter case, as here, the acts of covering up can by themselves indicate nothing more than that the conspirators do not wish to be apprehended—a concomitant, certainly of every crime since Cain attempted to conceal the murder of Abel from the Lord." 353 U.S. at 405-406.

(3) *Duration of Conspiracy.* The Court of Appeals' conclusion that the conspiracy was "still in operation" at the time the concealment was attempted contradicts the record and is in conflict with the previous holdings of this Court. The mere fact that the indictment charges generally that a conspiracy continues until the date of the indictment's return does not extend the duration of the conspiracy to the same date for purposes of Rule 801(d)(2)(E). In *Fiswick* v. *United States, supra,* the Court suggested that the overt acts "averred and proved may . . . mark the duration" of the conspiracy. 329 U.S. at 216. In the case at bar, the last overt act charged and testified to occurred January 23, 1976, months prior to the concealment attempts. (App. E at 61a.) Also in *Fiswick,* the Court held that a conspiracy to deceive the government terminates, for purposes of the co-conspirator hearsay exception, as to each conspirator who confesses as of the time of his confession. 329 U.S. at 217. By analogy, here the conspiracy as to these petitioners could not have survived the search and seizure of their papers and effects in April, 1976, a month prior to the concealment attempts. See footnote 4, *supra.* While the Court of Appeals concluded generally that the conspiracy was "still in operation" as late as August, 1976, the record fails to support this. *See* footnote 4, *supra,* and App. E at 118a.

Although the results of any conspiracy may be continuing, this does not make it a "continuing conspiracy." *Fiswick* v. *United States, supra,* 329 U.S. at 216; *United States* v. *Irvine,* 98 U.S. 450 (1879). Rather, "continuous cooperation of the conspirators to keep it up" is necessary. *United States* v. *Kissel,* 218 U.S. 601, 607 (1910). Here, the Government did not charge or prove that these petitioners continually cooperated with other alleged conspirators until and during the concealment attempts.

Since there is no evidence that the conspiracy charged was being pursued by these petitioners, or indeed by any of alleged conspirators, at the time of Davis' concealment attempts, hearsay statements relating to those attempts were not admissible against these petitioners. *Lutwak* v. *United States, supra; Delli Paoli* v. *United States,* 352 U.S. 232, 237 (1956), *overruled on other grounds, Bruton* v. *United States,* 391 U.S. 123, 126 (1967).

II. The Court of Appeals' Holding In This Case, By Expanding Limitations Previously Imposed By This Court and By Rule 801(d)(2)(E) on the Admissibility of Co-conspirator Hearsay Declarations, Presents a Serious Threat to Fairness In the Administration of Justice in Light of the Expanding Use of Conspiracy Prosecutions.

A writ of certiorari should also be granted because the "loose practice" allowed by the Court of Appeals' holding in this case will inevitably feed the "growing

habit to indict for conspiracy" which continues to present a "serious threat to fairness" in the administration of justice. See *Krulewitch* v. *United States, supra,* 336 U.S. at 445-446 (Jackson, J., concurring specially). In 1925, the Conference of Senior Circuit Judges observed that the "rules of evidence in conspiracy cases make them the most difficult to try without prejudice to an innocent defendant." Annual Report of the Attorney General for 1925, pp. 5-6, quoted by Mr. Justice Jackson concurring specially in *Krulewitch* v. *United States, supra,* 336 U.S. at 446, n. 2. The "growing habit" to indict for conspiracy which was of such concern to Mr. Justice Jackson, has continued to concern this Court, which has repeatedly resisted attempts to facilitate this growth through relaxation of the standards governing admissibility of co-conspirator hearsay. *See Dutton* v. *Evans,* 400 U.S. 74, 82 (1970). The holding of the Court of Appeals in this case greatly relaxes (if it does not eliminate) those strict, limiting standards, thereby encouraging the "habit" to indict for conspiracy in lieu of or in addition to the substantive offense.

Regarding the construction and application of Rule 801(d)(2)(E), the Rules of Evidence Advisory Committee appointed by this Court emphasized that the basis for admissibility of co-conspirators hearsay declarations should not be expanded "beyond that already established." Rothstein, *Federal Rules of Evidence* (1977 ed.), at 330. The Court of Appeals' invention of a "continuing sequence of objectives" and its unjustified reliance upon an "implied conspiracy" to conceal erroneously and dangerously expand the standards for admissibility beyond the limits plainly fixed by this Court and by Rule 801(d)(2)(E). *See* discussion *supra,* pp. 10-17.

III. The Co-conspirator Declarations Relating to Subornation of Grand Jury Witnesses Had a Substantial Influence In Bringing About The Petitioners' Convictions.

Finally, a writ of certiorari should be granted to review the reversible error committed by the trial court in admitting the co-conspirator declarations of attempted concealment. The error is not harmless but reversible, since (1) the jury's use of the evidence was not limited by appropriate instruction (discussed *supra,* p. 9 and footnote 6), (2) the prosecution's closing argument for conviction of these petitioners made repeated references to the subornation attempts. (R. Vol. 10, p. 1909, 1930-1931) and (3) the highly detailed and prejudicial character of the subornation testimony leaves grave doubt as to whether that testimony had a "substantial influence in bringing about" the jury verdict. *Krulewitch* v. *United States, supra,* 336 U.S. at 444.

The failure of the trial court to limit the use of the evidence, coupled with the argument of the prosecutrix, and the grave doubt generated by the nature of the concealment evidence, constituted reversible error. See *Lutwak* v. *United States, supra,* 344 U.S. at 618-619; *Delli Paoli* v. *United States, supra,* 352 U.S. at 232.[9]

[9] The nature of the concealment attempts here come very close to a confession by co-defendant Davis, or, as the Government told the jury, demonstrated Davis' "knowledge of his guilt." (R. vol. 10, p. 1931). In *Bruton, supra,* this Court overruled *Delli Paoli* to the extent that case allowed a joint trial to proceed after admission in evidence of a co-defendant's confession, reasoning that there was a "substantial risk," despite limiting instructions, that the admission of the extra-judicial statements determined Bruton's guilt. 391 U.S. at 126. Here, while petitioners do not raise the confrontation issue involved in *Bruton,* they do contend that evidence of attempted subornation of grand jury testimony erroneously admitted in a joint trial before a jury will inevitably "bring about" a guilty verdict against those not involved in the subornation attempts, particularly in the absence of limiting instructions.

CONCLUSION

For the reasons stated, the petition for certiorari should be granted.

Respectfully submitted,

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March, 1979

APPENDIX

APPENDIX A

UNITED STATES COURT OF APPEALS,
FIFTH CIRCUIT

UNITED STATES OF AMERICA,
Plaintiff-Appellee,

v.

ADELA NANCY DEL VALLE, MORRY S. FOX, JAMES A. DAVIS, II and IRVING CURTIS,
Defendants-Appellants.

No. 77-5279

Jan. 10, 1979

* * * * * * * * * * *

Appeals from the United States District Court For the Southern District of Florida.

Before BROWN, *Chief Judge,* AINSWORTH and VANCE, *Circuit Judges.*

VANCE, *Circuit Judge:*

Appellants Adela Nancy Del Valle, Morry S. Fox, James A. Davis, II and Irving Curtis, together with Mary M. Hamilton, William H. "Shorty" Holton and Joe L. Moore, were indicted on August 27, 1976 on 105 counts. Counts 1 through 104 charged the defendants with using the mails in furtherance of a scheme to defraud various insurance carriers, accident victims and the Florida Bar Association, in violation of 18 U.S.C. § 1341.[1] Count 105 charged them with

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[1] Section 1341 in its pertinent part provides:

> Whoever, having devised or intending to devise any scheme or artifice to defraud, or for obtaining money or property by means of false or fraudulent pretenses, representations, or promises, . . . or procure for unlawful use any . . . obligation . . . or other article, or anything represented to be or intimated or held out to be such counterfeit or spurious article,

conspiracy to commit these substantive offenses in violation of 18 U.S.C. § 371.[2] A jury found each appellant guilty of all 105 counts.[3]

James Davis was an attorney whose practice consisted primarily of personal injury cases. He employed Mary Hamilton, as his secretary, Joe Moore, as office manager, and Irving Curtis and Shorty Holton, as "runners." Morry Fox was a practicing physician. He owned the Westchester Hospital in addition to his private clinic where Nancy Del Valle was his secretary.

The scheme which brought about the indictment of appellants involved the submission of fraudulent medical bills to insurance companies. Through the efforts of his "runners," Curtis, Holton and others, Davis procured accident victims as his clients and sent them to Fox for their medical treatment. Fox automatically hospitalized the victims in Westchester just long enough to reach the $1,000 thresh-

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for the purpose of executing such scheme or artifice or attempting so to do, places in any post office or authorized depository for mail matter, any matter or thing whateer to be sent or delivered by the Postal Service, or takes or receives therefrom, any such matter or thing, or knowingly causes to be delivered by mail according to the direction thereon, or at the place at which it is directed to be delivered by the person to whom it is addressed, any such matter or thing . . .

shall be guilty of an offense against the United States.

[2] Section 371 in its pertinent part provides:

If two or more persons conspire either to commit any offense against the United States, or to defraud the United States, or any agency thereof in any manner or for any purpose, and one or more of such persons do any act to effect the object of the conspiracy, each . . .

shall be guilty of an offense against the United States.

[3] Prior to trial, Hamilton entered a plea of guilty and thereafter testified for the government. Trial of Holton and Moore was severed for reasons not material to this appeal.

old required by the Florida no-fault law[4] and then provided inflated, and in some cases, false, medical bills which Davis submitted to the insurance carriers. The proceeds from the insurance company drafts provided the revenue to the conspiracy, which according to one witness was over one million dollars a year. Del Valle, Moore and Hamilton were intimately involved in the day-to-day operation of the conspiracy.

I.

Appellants' first contention is that the trial court erred in denying their motions to suppress certain files and records seized in searches of the offices of Davis and Fox on April 3, 1976. Appellants attack the sufficiency of the affidavit on which the issuance of a search warrant was based. It is appellants' claim that the affidavit did not contain sufficient facts to establish that appellants' premises were being utilized to commit a federal crime and that without such a showing the affidavit was insufficient and the motion to suppress should have been granted. Appellants point to this court's statement of the applicable rule in *United*

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[4] The Florida no-fault law, as it then existed, provided in pertinent part:

(2) In any action of tort brought against the owner, registrant, operator, or occupant of a motor vehicle . . . or against any person or organization legally responsible for his acts or omissions, a plaintiff may recover damages in tort for pain, suffering, mental anguish, and inconvenience because of bodily injury, sickness, or disease arising out of the ownership, maintenance, operation, or use of such motor vehicle only in the event that the benefits which are payable for such injury under § 627.736(1)(a) or which would be payable but for any exclusion or deductible authorized by §§ 627.730-627.741 exceed one thousand dollars.

Florida Statutes, Annotated, Title 35, § 627.737(2).

Although the Florida statute has been amended during the pendency of this case, the change has no effect on the issues before us.

States v. Brouillette, 478 F.2d 1171, 1176 (5th Cir. 1973) where we stated:

> The standard rule is that in determining whether probable cause exists for issuance of a search warrant it is not necessary to determine whether or not the offense has actually been committed but it is necessary to determine whether the affiant has reasonable grounds, at the time of making the affidavit and the issuance of the warrant, for believing that "the offense charged" was being or had been committed.

Brouillette cites another case which is supportive of appellants' position:

> In *United States v. Birrell,* 242 F.Supp. 191 (S.D. N.Y. 1965), federal agents sought and obtained a search warrant for certain property on the basis of an affidavit quite similar to the one here in question. The affidavit merely recited that the agent had reason to believe that certain records were being concealed at the premises to be searched, which records "have been used in committing a violation of Title 18, United States Code, Section 1341." The section involved is the basic mail fraud section. The court held the warrant plainly insufficient on its face because there was not a single fact stated in the affidavit tending to show that defendant Birrell used the mails in a scheme to defraud. Use of the mails was, of course, a necessary element in determining that there existed probable cause that fraud by mail had been committed.

United States v. Brouillette, supra at 1177. In reliance on this authority appellants claim that, here also, the information in the affidavit was insufficient to show use of the mails in furtherance of a scheme to defraud. We agree that without a sufficient inclusion of that essential element of the offense under 18 U.S.C. § 1341 the affidavit would not meet

the requirements of *Brouillette.* We disagree, however, that the affidavit before us was insufficient under this standard.

The affidavit for search warrants was based on an investigation of eighty-six insurance claims. It factually described appellants' entire scheme at length and in detail. The affiants, both of whom were experienced in insurance fraud cases, stated that in their experience "demands against insurance companies and payment drafts by insurance companies are usually handled through the mail." The affidavit also showed that inspected claim files of insurance companies contained correspondence and bills from Davis, Fox and Westchester Hospital reflecting the senders' Miami, Florida addresses. *United States v. Ventresca,* 380 U.S. 102, 85 S.Ct. 741, 13 L.d.2d 684 (1965) holds that an affidavit for a search warrant must show sufficient facts to establish probable cause when interpreted in a common-sense and realistic fashion. These statements, when interpreted in a common-sense manner, are sufficient to establish probable cause. It is common knowledge that insurance companies routinely transact business through the mails. A common-sense interpretation of the term "correspondence" and of the facts set out in the affidavit, in light of normal business practice and the experience of the affiants, would indicate use of the mails. A magistrate's determination of probable cause is conclusive in the absence of arbitrariness. *Bastida v. Henderson,* 487 F.2d 860 (5th Cir. 1973). We think that the affidavit in this case meets the standard set out in both *Ventresca* and *Brouillette* and that the magistrate's conclusion that probable cause had been established was not arbitrary.

II.

The government introduced testimony that in an attempt to conceal the conspiracy Davis paid money to, coached and otherwise improperly attempted to influence witnesses who were to testify before the grand jury in May, 1976. Other

appellants contend that evidence of Davis' statements and acts were inadmissible as to them because they were not made and done during the course of nor in furtherance of the conspiracy, as required by Fed.R.Evid. 801(d)(2)(E).[5] In addition, they advance related arguments that it was plain error for the trial court not to give a limiting instruction to the jury and that the court erred in denying their motions for severance. Fox advances an additional contention that as to him, the testimony was inadmissible because there was no independent proof connecting him with the conspiracy. That additional contention will be dealt with separately in the following section.

Under Rule 801(d)(2)(E) of the Federal Rules of Evidence a statement made by a coconspirator during the course and in furtherance of a conspiracy is not hearsay is offered against another party to the conspiracy. The admissibility of such statements is dependent on the government's proving the existence of the conspiracy and the involvement with the conspiracy of the party against whom the statement is offered.[6]

Appellants' claim of error goes to the ultimate question of admissibility, in connection with which they rely on *Krulewitch v. United States,* 336 U.S. 440, 69 S.Ct. 716, 93 L.Ed. 790 (1949); *Lutwak v. United States,* 344 U.S. 604, 73 S.Ct. 481, 97 L.Ed. 593 (1953); and *Grunewald v. United States,* 353 U.S. 391, 77 S.Ct. 963, 1 L.Ed.2d 931 (1957). In

[5] Fed.R.Evid. 801(d)(2)(E) provides:

> A statement is not hearsay if . . . (t)he statement is offered against a party and is . . . (E) a statement by a coconspirator of a party during the course and in furtherance of the conspiracy.

[6] Treatment of such statements by the thial judge is presently under consideration by this court in the case of *United States v. James,* 576 F.2d 1121 (5th Cir. 1978), *motion for reh. en banc granted* (August 7, 1978). The record before us and our understanding of appellants' contentions, however, cause us to conclude the outcome of *James* will not control.

Krulewitch the Supreme Court made clear that to be admissible, hearsay statements of coconspirators (as they were called[7]), must be made in furtherance of the conspiracy charged and the conspiracy must be an ongoing conspiracy when the statement is made. It rejected the government's contention that an implied conspiracy to conceal survives the main conspiracy and that statements made in furtherance of such continuing implied conspiracy are admissible.

Lutwak reaffirmed the *Krulewitch* rule and in so doing made the following statement which supports appellants' view of the law:

> Relevant declarations or admissions of a conspirator made in the absence of the coconspirator, and not in furtherance of the conspiracy, may be admissible in a trial for conspiracy as against the declarant to prove the *declarant's* participation therein. The court must be careful at the time of the admission and by its instructions to make it clear that the evidence is limited as against the declarant only. Therefore, when the trial court admits against all of the conspirators a relevant declaration of one of the conspirators after the conspiracy has ended, without limiting it to the declarant, it violates the rule laid down in *Krulewitch*. Such declaration is inadmissible as to all but the declarant.

Lutwak v. United States, supra at 344 U.S. 618, 73 S.Ct. 489.

Grunewald presented a variation involving the same underlying principle but in connection with a statute of

[7] Before the Federal Rules of Evidence became effective this rule of law was properly referred to as the coconspirator exception to the hearsay rule. Fed.R.Evid. 801(d)(2)(E) clearly states, in a technical departure from the former rule, that such statements are not hearsay. *See United States v. Brown,* 555 F.2d 407 (5th Cir. 1977), *cert. denied,* 435 U.S. 904, 98 S.Ct. 1448, 55 L.Ed.2d 494 (1978). Some courts continue to cling to the old terminology.

limitations question. The government contended that a continuing agreement to conceal could extend the duration of a conspiracy for statute of limitations purposes. The court rejected the contention on the authority of *Krulewitch* and *Lutwak*. Clarification of the rule as it applies to the present problem was provided in the opinion of the court by Justice Harlan:

> By no means does this mean that acts of concealment can never have significance in furthering a criminal conspiracy. But a vital distinction must be made between acts of concealment done in furtherance of the *main* criminal objectives of the conspiracy, and acts of concealment done after these central objectives have been attained, for the purpose only of covering up after the crime.

Grunewald v. United States, supra at 353 U.S. 405, 77 S. Ct. 974.

Correct application of these opinions was demonstrated with particular clarity in *United States v. Diez,* 515 F.2d 892 (5th Cir. 1975). The controlling question which was resolved in *Diez* was whether, "for purposes of admissibility, there was sufficient evidence that the statements in question were made during the course of the conspiracy." The same central question is raised by appellants here.

The record before us reflects that Davis had been the focal point of a steady stream of investigatory activity. In addition to investigations by insurance companies and law enforcement agencies, Davis testified that about fifty complaints had been made to the Florida Bar Association and that the investigation "has been continuing now for about three years." The acts and statements in question were done and made by Davis prior to the May, 1976 grand jury. The indictment alleges and evidence shows that the conspiracy continued after that time. For example, Mary Hamilton testified that when she left the law firm in August, 1976, the conspiracy was still operating.

There are obvious distinctions between the conspiracy here and the one to which the *Krulewitch* holding was applied. The first distinction involves the sequence of events. We are dealing with statements made not after but during the conspiracy's operation. Second, the conspiracy here was not aimed at accomplishing a single objective with a precise moment of termination. This conspiracy had a continuing sequence of objectives. Third, the role of Davis in the conspiracy necessitated that he protect it from those investigative agencies which threatened its continuation. He was its shield. His attempts to influence witnesses were not acts of concealment related only to a past objective. They were parts of continuing activity that was essential to and therefore in furtherance of the survival of an ongoing operation. As this court recognized in *United States v. Diez, supra,* concealment is sometimes a necessary part of a conspiracy, so that statements made solely to aid the concealment are in fact made during and in furtherance of the charged conspiracy.

> On the other hand, in the present case the central aim of the conspiracy was to deceive officials of the Internal Revenue Service, thereby inducing them to accept fraudulent tax returns as truthful and accurate. In light of the substantial possibility that the returns would be audited and investigated, the filing of the returns did not fully accomplish the purpose of the main conspiracy, which by its very nature, called for concealment.[7]

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[7] The conspiracy alleged in this case is similar to the Supreme Court's examples, in *Grunewald, supra,* of crimes that inherently involve concealment.

> Kidnapers in hiding, waiting for ransom, commit acts of concealment in futherance of the objectives of the conspiracy itself, just as repainting a stolen car would be in furtherance of a conspiracy to steal; ***in both cases the successful accomplishment of the crime necessitates concealment.***

353 U.S. at 405, 77 S.Ct. at 974 (emphasis added).

United States v. Diez, supra at 897. We conclude that the challenged testimony comes within the operation of this rule.

This resolution of the central question also disposes of the two related questions raised by appellants other than Davis. The contentions with respect to severance and to additional cautionary instructions as referred to in *Lutwak, supra,* are based on the premise that the Davis statements were admissible only against Davis. We have concluded that under Rule 801(d)(2)(E) they were admissible against all members of the conspiracy.

III.

Curtis and Fox question the sufficiency of the evidence. In considering the issue, we must view the record in the light most favorable to the government. *Glasser v. United States,* 315 U.S. 60, 62 SCt. 457, 86 L.Ed. 680 (1942). We conclude that the evidence is not only sufficient to sustain the convictions of each appellant, it is overwhelming.

IV.

Two former secretaries in the Davis office, Mary Hamilton and Jeanette Faes, testified as witnesses for the government. Faes had given prior testimony before the grand jury. Hamilton had furnished the government with several typed statements. The government provided defendants with relevant portions of the Faes transcript and the Hamilton statements, but excised other portions. The trial judge followed the procedure set out in 18 U.S.C. § 3500 (c),[8] conducted an *in camera* inspection of the material,

[8] Title 18 U.S.C. § 3500(c) provides:

(c) If the United States claims that any statement ordered to be produced under this section contains matter which does not relate to the subject matter of the testimony of the witness, the court shall order the United States to deliver such statement for the inspection of the court in camera. Upon such delivery the court shall excise the portions of such statement which do not relate to the subject matter of the testimony of the witness. With such material excised, the court shall then direct delivery of such statement to the defendant for his use. If, pursuant to such procedure, any portion of such statement is withheld from the defendant and the defendant objects to such withholding, and the trial is continued to an adjudication of the guilt of the defendant, the entire text of such statement shall be preserved by the United States and, in the event the defendant appeals, shall be made available to the appellate court for the purpose of determining the correctness of the ruling of the trial judge.

and required that defendants be furnished additional portions of the Hamilton statements. Under the Jencks Act determining the producibility of statements is primarily the duty of the trial judge, whose ruling will be sustained unless clearly erroneous. *United States v. Blackburn,* 446 F.2d 1089 (5th Cir. 1971), *cert. denied,* 404 U.S. 1017, 92 S.Ct. *79, 30 L.Ed.2d 665 (1972). In response to appellants' implorations we have inspected both the furnished and the excised portions of the Jencks material and find no basis for reversal.

AFFIRMED.

APPENDIX B

UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 77-5279

D. C. Docket No. 76-424-CR-SMA

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

versus

ADELA NANCY DEL VALLE, MORRY S. FOX, JAMES A. DAVIS, II and IRVING CURTIS, *Defendants-Appellants.*

Appeals from the United States District Court for the Southern District of Florida

Before BROWN, *Chief Judge,* AINSWORTH and VANCE, *Circuit Judges.*

Judgment

This cause came on to be heard on the transcript of the record from the United States District Court for the Southern District of Florida, and was argued by counsel;

ON CONSIDERATION WHEREOF, It is now here ordered and adjudged by this Court that the judgment of the said District Court in this cause be, and the same is hereby, affirmed.

January 10, 1979

Issued As Mandate:

APPENDIX C

IN THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

No. 77-5279

UNITED STATES OF AMERICA, *Plaintiff-Appellee,*

versus

ADELA NANCY DEL VALLE, MORRY S. FOX, JAMES A. DAVIS, II and IRVING CURTIS, *Defendants-Appellants.*

Appeals from the United States District Court for the Southern District of Florida

Filed February 12, 1979

On Petition For Rehearing

(February 12, 1979)

Before BROWN, *Chief Judge,* AINSWORTH and VANCE, *Circuit Judges.*

PER CURIAM:

IT IS ORDERED that the petition for rehearing filed on behalf of Adela Nancy Del Valle & Morry S. Fox in the above entitled and numbered cause be and the same is hereby denied.

ENTERED FOR THE COURT:

/s/ ROBERT S. VANCE
Robert S. Vance
United States Circuit Judge

Form 703-2

APPENDIX D

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF FLORIDA

No. 76-424-Cr-PF

18 USC 134F
M/S $1,000—5 yrs.

18 USC 371
M/S $10,000—5 yrs.

18 USC 2

UNITED STATES OF AMERICA

v.

IRVING CURTIS, JAMES A. DAVIS, II, ADELA NANCY DEL VALLE, MORRY S. FOX, MARY M. HAMILTON, WILLIAM H. HOLTON, a/k/a "Shorty", and JOE L. MOORE

INDICTMENT

The Grand Jury charges that:

COUNT 1

I. From a date unknown to the Grand Jury but beginning prior to January 1, 1972, and continuing up to and including the date of the return of this indictment, in the Southern District of Florida, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

along with others both known and unknown to the Grand Jury, did devise and intend to devise a scheme and arti-

fice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, from various insurance carriers, accident victims and the Florida Bar Association.

The objects of this scheme were to

(a) induce accident victims to institute claims against insurance carriers and to induce said insurance carriers to pay claims to the defendants and their clients by submitting false and inflated medical bills;

(b) reduce payments to accident victims by deducting false and inflated medical bills and costs from the total amount of their settlements; and

(c) defraud the Florida Bar from conducting legitimate inquiries into matters raised by clients of JAMES A. DAVIS, II, concerning the handling of accident claims by preparing and submitting to the Florida Bar false and inflated justifications for cost.

II. At all times pertinent to this indictment:

(a) The defendant MORRY S. FOX (hereafter referred to as M. S. Fox) had an office at the Fox Medical Center at 606 West Flagler Street, Miami, Florida, and conducted a business as a Doctor of Osteopathy.

(b) The defendant M. S. Fox was affiliated with Westchester General Hospital, 2500 S.W. 75th Avenue, Miami, Florida, as either part owner or officer.

(c) The defendant ADELA NANCY DEL VALLE (hereafter referred to as NANCY DEL VALLE) was employed as a medical secretary to M. S. Fox at the Fox Medical Center.

(d) The defendant JAMES A. DAVIS, II, was an attorney and operated a law office at 1900 S.W. 3rd Avenue, Miami, Florida and later at 2398 South Dixie Highway, Miami, Florida. To assist him in his practice DAVIS employed various attorneys and other personnel.

(e) The defendant MARY M. HAMILTON was employed as the private secretary to JAMES A. DAVIS, II.

(f) The defendant JOE MOORE was employed as Office Manager in the offices of JAMES A. DAVIS, II.

(g) The defendant IRVING CURTIS was employed by JAMES E. DAVIS, II as an "investigator".

(h) The defendant WILLIAM HOLTON, a/k/a "Shorty" was paid a fee for each person involved in an accident who he obtained as a client for JAMES A. DAVIS, II.

(i) On January 1, 1972 portions of the State of Florida's "no-fault" law went into effect. That law provided in part that persons involved in automobile accidents could not institute suit against the party responsible for the accident unless his medical bills exceeded $1,000 or, unless, he suffered certain permanent injuries.

III. It was part of the scheme and artifice to defraud:

(a) That the defendant JAMES A. DAVIS, II would represent clients who claimed to be injured in automobile or bus accidents, caused by the negligence of insured parties.

(b) That the defendant JAMES M. DAVIS, II would utilize "runners", and that he would pay such "runners" a fee in cash to obtain accident victims as clients for his firm.

(c) That defendants IRVING CURTIS and WILLIAM H. HOLTON, a/k/a "Shorty" were employed as "runners" by JAMES H. DAVIS, II and were paid a fee for each person involved in an automobile or bus accident who they obtained as a client for JAMES A. DAVIS, II.

(d) That defendants IRVING CURTIS and WILLIAM H. HOLTON, a/k/a "Shorty" would encourage accident victims to "sign up" for DAVIS to represent them, by telling

them that they could make some money and that insurance would pay all their bills.

(e) That the defendants JAMES A. DAVIS, II, JOE MOORE, IRVING CURTIS, and WILLIAM HOLTON, a/k/a "Shorty" would would cause accident victim clients to be referred to defendant M. S. Fox for examinations and treatment knowing that defendant Fox would inflate the medical bills and cause all of the clients to be hospitalized at Westchester General Hospital so that total medical bills for each DAVIS client would exceed the no-fault $1,000 threshold.

(f) That defendant M. S. Fox would examine or treat the clients of JAMES A. DAVIS, II and cause the preparation of medical reports and false and fraudulent medical bills for medical services purportedly rendered to said clients.

(g) That such bills would include charges for visits by clients to defendant Fox when Fox knew that these clients had never made such visits to him or to anyone acting on his behalf.

(h) That defendant Fox would submit medical reports and the false and fraudulent medical bills to the offices of JAMES A. DAVIS, II knowing that such bills were fraudulent and would be submitted to insurance carriers by DAVIS personnel and used as a basis for demands for settlements against insurance carriers.

(i) That M. S. Fox would and did accept substantially reduced payments from the office of JAMES A. DAVIS, II in full satisfaction of said bills.

(j) That defendant NANCY DEL VALLE would prepare the medical reports and the false and fraudulent medical bills for medical services purportedly rendered to clients and would provide dates of such alleged services, knowing that such bills and dates of treatment were false and

would be submitted to insurance carriers and used as a basis for settling claims and cases.

(k) That defendants JAMES A. DAVIS, II and JOE MOORE and attorneys employed by the DAVIS law firm would make demands for settlements and institute law suits against insurance carriers on behalf of their accident victim clients.

(l) That defendants JAMES A. DAVIS, II and JOE MOORE would submit and cause to be submitted to such insurance carriers inflated medical bills from M. S. Fox and use such bills as a basis for a demand for settlement against such carriers, knowing that such bills were inflated.

(m) That defendants JAMES A. DAVIS, II, JOE MOORE, MARY HAMILTON and M. S. FOX would cause insurance carriers to issue drafts in payment of the fraudulent medical bills and in settlements of the claims of accident victims.

(n) That defendants JAMES A. DAVIS, II and MARY M. HAMILTON maintained complete control over a certain portion of the files which they designated as "C" files. Insurance drafts in "C" files were always cashed and no entries pertaining to such drafts were made in the regular bookkeeping records of the office. Defendant MARY HAMILTON maintained a separate record pertaining to "C" files.

(o) Defendants IRVING CURTIS and WILLIAM HOLTON, a/k/a "Shorty" and other runners used by DAVIS' office were always paid in cash and these payments were also not recorded in the regular bookkeeping records of the office.

(p) That JAMES A. DAVIS, II used the hospital bills, the medical bills from the Fox Medical Clinic and figures for costs which did not accurately reflect costs incurred, to deduct from the settlement figure and thereby lower the amount paid to the person involved in the accident.

(q) Inquiries from the Florida Bar requesting itemized breakdowns of costs were responded to by the office of JAMES A. DAVIS, II with the assistance of the office of M. S. FOX by falsifying and inflating various items to reach the figure previously deducted from the client's settlement.

IV. That the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

for the purpose of misleading and with the intent to mislead the various insurance carriers, accident victims and the Florida Bar would and did make and cause to be made false and fraudulent statements, representations, and promises, well knowing at the time that said representations, statements, and promises would be and were false and fraudulent when made, including but not limited to the following:

(a) A charge for "$130 for follow up visits 13 at $10.00 each" on a medical bill from Dr. M. S. Fox for Sarah E. Blair dated September 10, 1973.

(b) A charge for "$330 for office visits 33 at $10.00 each" on a medical bill from defendant Dr. M. S. Fox for Emma Govin dated May 14, 1973.

(c) A charge for "court reporters—Jack Besoner and Associates dated January 15, 1974, check # 2633, for $146.50" on a charge sheet in the file of Albert Fernandez, case # 5469.

(d) A charge for "court reporters—Jack Besoner and Associates dated May 19, 1975, check # 1897, for $87.40" on a charge sheet for Eduardo Valdes.

(e) A breakdown on a charge sheet: "conference with Dr. M. S. Fox (4/25/73)—$50; conference with Dr. M. S. Fox (6/1/73)—$25; investigation and photography $107.50; photographs—$35; accident report $3.00; Westchester General Hospital—medical records $6.00; Jackson Memorial Hospital—medical records $5.00; TOTAL—$231.50" contained in a letter addressed to the Florida Bar dated April 2, 1974 from the office of JAMES A. DAVIS, II on Yva Henry case # 5564.

V. That on or about September 18, 1973 at Miami, Dade County in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated September 18, 1973, from JAMES A. DAVIS, II, to Aetna Life & Casualty, 95 Merrick Way, Coral Gables, Florida; transmitting specials for Elmira Ennis; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 2

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count I of this indictment and incorporates the same by reference herein.

2. On or about March 18, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated March 18, 1974, from JAMES A. DAVIS, II to Aetna Life & Casualty, 95 Merrick Way, Coral Gables, Florida, transmitting specials for Elmira Ennis; in violation of Title 18, United States Code, Section 1341 and 2.

COUNT 3

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count I of this indictment and incorporates the same by reference herein.

2. On or about March 21, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and

fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon; a letter dated March 21, 1974, from Aetna Life & Casualty, to JAMES A. DAVIS, II, Esq., 1900 S.W. Avenue, Miami, Florida, contents being draft No. M34642088, dated February 19, 1974, payable to Elmira Ennis and JAMES A. DAVIS, Esq., amount $382.81; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 4

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. In or about March 29, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated March 29, 1974, from Aetna Life & Casualty, to JAMES A. DAVIS, II, ESQ., 1900 S.W. 3 Avenue, Miami, Florida, contents being draft No. M37309351, dated April 2, 1974, payable to Elmira Ennis and her attorney, JAMES DAVIS, amount $128.69; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 5

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 13, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated March 13, 1973, from JAMES A. DAVIS, II, to John Bowers (insured), 9960 S.W. 102 Street, Miami, Florida, and copy to

State Farm Insurance Company, 7040 S.W. 61 Avenue, Miami, Florida, for Elmira Ennis and Sarah Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 6

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 5, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated November 5, 1973, from JAMES A. DAVIS, II, to State Farm Insurance Company Claim Office, 7040 S.W. 61 Avenue, Miami, Florida; and two-page letter, handwritten, dated March 20, 1973, from Mrs. Charles H. Blair, 11521 S.W. 138 Street, Miami, Florida, for Elmira Ennis Clark and Sarah Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 7

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 18, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the foresaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated September 18, 1973, from JAMES A. DAVIS, II, to State Farm Insurance Company Claim Office, 7040 S.W. 61 Avenue, Miami, Florida; transmitting specials for Elmira Ennis and Sarah Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 8

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about May 16, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and

for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter from Kenneth Barnett, Attorney for State Farm Insurance Company, to JAMES A. DAVIS, II, contents being draft No. 119389716J, dated May 2, 1974, payable to Sarah Blair, Charles Blair, JAMES A. DAVIS, II, and Allstate Insurance Company, amount $758.29; draft No. 119527939Q, dated May 2, 1974, payable to Elmira Ennis, James D. Ballard and JAMES A. DAVIS, II, amount $4,750.00; and draft No. 119527940Q, dated May 2, 1974, payable to Sarah Blair, Charles Blair, and JAMES A. DAVIS, II, amount $3,991.71; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 9

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 21, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false

and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated March 21, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, Miami, Florida, for Sarah E. Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 10

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 18, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated March 18, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, Miami, Florida, transmitting specials for Sara E. Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 11

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about February 12, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a subrogation letter dated February 12, 1974, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, Miami, Florida, re-

garding Sara E. Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 12

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about February 25, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated February 25, 1974, from JAMES A. DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, Miami, Florida, transmitting itemized statement from Westchester General Hospital for Sarah Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 13

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 17, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 41371479, dated September 17, 1973, payable to Westchester General, 2500 S.W. 75 Avenue, Miami, Florida, amount $938.90, for Sara E. Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 14

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 1, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,

MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 41410763, dated October 1, 1973, payable to Westchester General Hospital, 2500 S.W. 75 Avenue, Miami, Florida, amount $280.00, for Sara E. Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 15

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 6, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 41411378, dated October 10, 1973, payable to M. G. Fox, D.O., 606 West Flagler, Miami, Florida, amount $380.00, for Sara

E. Blair; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 16

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 1, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to delivered by mail, according to the direction thereon, a letter of representation dated March 1, 1973, from JAMES A. DAVIS, II, to Mrs. Louise Ingraham, (insured) 3221 Florida Avenue, Miami, Florida, with copy to State Farm Insurance Company, 8865 South Dixie Highway, Miami, Florida, regarding Betty Jean Daniels; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 17

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 20, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated August 20, 1973, from JAMES A. DAVIS, II, to State Farm Insurance Company Claim Office, 8865 South Dixie Highway, Miami Florida, transmitting specials for Betty Daniels; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 18

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 29, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter of representation dated November 29, 1973, from Philip L. Font, Law Offices of JAMES A. DAVIS, II, to State Farm Insurance Company, 8603 South Dixie Highway, Miami, Florida, for Betty Daniels; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 19

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 8, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a cover letter from Gene Kubicki, attorney for State Farm Insurance Company to JAMES A. DAVIS, II, transmitting draft No. 119524699Q dated January 8, 1974, payable to Betty J. Daniels and JAMES A. DAVIS, II, in the amount of $3,000.00; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 20

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 20, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a demand letter dated August 20, 1973, from JAMES A. DAVIS, II, to GEICO Claim Office, 910 North Flagler, Miami, Florida, transmitting specials for Betty Jean Daniels; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 21

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 25, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter containing draft No. K3008645, dated October 25, 1973, payable to Betty J. Daniels and JAMES A. DAVIS, II, Attorney, amount $1,983.45, from GEICO; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 22

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 27, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false

and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter containing draft No. K2757[illegible]7, dated August 27, 1973, payable to Betty J. Daniels, 2901 Virginia Street, Apartment 426, Coconut Grove, Florida, amount $207.02, from GEICO; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 23

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 20, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a demand letter dated August 20, 1973, from JAMES A. DAVIS, II, to Aetna Life Insurance Claim Office, 95 Merrick Way, Coral Gables, Florida, transmitting specials for Betty Daniels, in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 24

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 14, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter containing draft No. 00716431, dated September 14, 1973, payable to Betty G. Daniels, c/o Davis & Donovan, 1900 S.W. 2 Avenue, Miami, Florida, amount $252.00, from Aetna Life & Casualty; in violation of Title 18, United States Code, Section 1341 and 2.

COUNT 25

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 30, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter containing draft No. 00713986, dated August 30, 1973, payable to Betty G. Daniels, c/o Davis & Donovan, 1900 S.W. 3 Avenue, Miami, Florida, amount $23.00, from Aetna Life & Casualty; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 26

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 21, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means

of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter dated January 21, 1974, from JAMES A. DAVIS, II, to Ms. Betty J. Daniels, 2901 Virginia Street, Apartment 426, Miami, Florida, which transmitted closing statement for Betty J. Daniels, Case No. 5479, requested by letter dated January 15, 1974, from Betty Jean Daniels to Philip Font; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 27

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 26, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail according to the direction thereon, a letter of representation dated December 26, 1972, from JAMES A. DAVIS, II, to Miss Mayra Isabel Lopez (insured), 5585 S.W. 64 Avenue, Miami, Florida, with copy to Arnold & Watts, 1888 N.W. 7 Street, Miami, Florida, adjusters; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 28

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about May 16, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated May 16, 1973, from JAMES A. DAVIS, II, to Crawford & Company (forwarded to GEICO by memorandum dated May 21, 1973),

7333 Coral Way, Miami, Florida, for Herma Govin; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 29

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about February 5, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated February 5, 1974, from Arnold & Watts, to JAMES A. DAVIS, II, 1900 S.W. 3 Avenue, Miami, Florida, which transmitted draft No. K3333007, amount $1,750.00, payable to Herma Govin & JAMES A. DAVIS, II, and a release; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 30

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about May 30, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated May 30, 1973, from JAMES A. DAVIS, II, to Clerk of County Commission, Board of Commissioners, Dade County Court House, Miami, Florida, for Gwendolyn Jones and Edna McDonald; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 31

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 24, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated October 24, 1973, from JAMES A. DAVIS, II, to Metropolitan Transit Authority, 330 N.W. 32 Avenue, Miami, Florida, transmitting specials for Gwendolyn Jones and Edna McDonald; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 32

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about February 26, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated February 26, 1974, from

Metropolitan Transit Authority to Davis & Donovan, 1900 S.W. 3 Avenue, Miami, Florida, containing draft No. 677030, dated February 18, 1974, amount $2,000.00, payable to Edna McDonald & James A. Davis, II, Attorney; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 33

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 13, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated March 13, 1973, from JAMES A. DAVIS, II, to Clerk of County Commission, Board of Commissioners, Dade County Court House, Miami, Florida, for Rosa Bell Carey and Shelly Dames; in violation of Title 18, United States Court, Sections 1341 and 2.

COUNT 34

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 19, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated June 19, 1973, from JAMES A. DAVIS, II, to Metropolitan Transit Authority, 3300 N.W. 32 Avenue, P.O. Box 887, Miami, Florida, transmitting specials for Rosa Bell Carey and Shelly Dames; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 35

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 10, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and

for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated July 10, 1973, from JAMES A. DAVIS, II, to Metropolitan Transit Authority, 3300 N.W. 32 Avenue, P.O. Box 887, Miami, Florida, transmitting medical records from Westchester General Hospital on Shelly Dames; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 36

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 5, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated June 5, 1972, from JAMES A. DAVIS, II, to Roy G. Peterson (insured), 1039 Trinidad Avenut, Fort Pierce, Florida, with mailing envelope postmarked June 9, 1972, forwarding letter to Allstate Insurance Company, 5950 Sunset Drive, Miami, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 37

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 18, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated December 18, 1972, from JAMES A. DAVIS, II, to Allstate Insurance Com-

pany, 5950 Sunset Drive, Miami, Florida, transmitting specials for Celina Paret; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 38

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 18, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated December 18, 1972, from JAMES A. DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, Miami, Florida, for Celina Paret; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 39

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 19, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 00356903, dated March 19, 1973, amount $7,000.00, payable to Celina Paret, widow and her attorney, JAMES DAVIS, 1900 S.W. 3 Avenue, Miami, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 40

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 30, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and premises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,

MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation, dated October 30, 1972, from JAMES A. DAVIS, II, to Clerk of the County Commission, Board of Commissioners, Dade County Courthouse, Miami, Florida, for Celina Paret; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 41

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 18, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated June 18, 1973,

from JAMES A. DAVIS, II, to Metropolitan Transit Authority, P.O. Box 887, Miami, Florida, transmitting specials for Celina Paret, Benny Paret, Jr., and Albert Paret; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 42

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 10, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of denial of coverage, dated March 10, 1975, from Florida Insurance Guaranty Association, Inc., to JAMES A. DAVIS, II, Attorney at Law, 2398 South Dixie Highway, Coconut Grove, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 43

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 1, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated March 1, 1973, from JAMES A. DAVIS, II, to Roberto Vinas (insured), 3034 S.W. 7 Street, Miami, Florida, with copy to Allstate Insurance Company, 5950 Sunset Drive, Miami, Florida, for Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 44

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 15, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,

MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction, a demand letter dated October 15, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, South Miami, Florida, transmitting specials for Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 45

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 18, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated March 18, 1974, from JAMES A. DAVIS, II, to Allstate Insurance Company, 5950

Sunset Drive, South Miami, Florida, transmitting medical bill from Westchester General Hospital, for Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 46

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 13, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated March 13, 1974, from JAMES A. DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, South Miami, Florida, transmitting dates of treatment by Dr. M. S. Fox and medical record from Westchester General Hospital for Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 47

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 23, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud nad for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated July 23, 1974, from Jonas Jeffrey Shattner, law offices of JAMES A. DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, South Miami, Florida, transmitting copy of complaint, filed on behalf of Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 48

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 9, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of

executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

direction thereon, a letter containing draft No. 41629720, dated August 9, 1974, amount $3,278.00, payable to Harold Duke & his attorney JAMES A. DAVIS, of Miami, 3326 Elizabeth Street, Miami, Florida, from Allstate Insurance Company; in violation of Title 18 United States Code, Sections 1341 and 2.

COUNT 49

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 8, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated December 8, 1975, from Florida Insurance Guaranty Association, Inc., to JAMES A. DAVIS, Esq., 2398 South Dixie Highway, Coconut Grove, Florida, transmitting release for Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 50

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 23, 1976, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 017757, dated January 23, 1976, amount $195.00, payable to Harold Duke; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 51

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 15, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated January 15, 1974, from JAMES A. DAVIS, II, to Allstate, 20450 N.W. 2 Avenue, Miami, Florida, transmitting specials for Willie Rivers; in violation of Title 18, Unted States Code, Sectons 1341 and 2.

COUNT 52

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 10, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and

for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated July 10, 1975, from Florida Insurance Guaranty Association, to JAMES A. DAVIS, JR., Esq., 2398 South Dixie Highway, Miami, Florida, transmitting releases for Manuel Ruiz; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 53

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 6, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 13456, dated November 6, 1975, amount $3,500.00, payable to Manual Ruiz and Ana Ruiz individually and their attorney, JAMES A. DAVIS; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 54

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about April 25, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated April 25, 1973, from JAMES A. DAVIS, II, to Harvey T. James (insured), 149 N.W. 89 Street, Miami, Florida, with copy to State Farm Insurance Company, 14350 N.E. 6 Avenue,

Miami, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 55

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 27, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated September 27, 1973, from JAMES A. DAVIS, II, to State Farm Insurance Company Claim Office, 14350 N.E. 6 Avenue, Miami, Florida, transmitting specials for Manuel and Ana Ruiz; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 56

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 15, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of

executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated August 15, 1974, from Michael R. Jenks, to Philip Font, Esq., Law Offices of JAMES A. DAVIS, II, 1900 S.W. 3 Avenue, Miami, Florida containing draft No. 119523828Q, dated July 31, 1974, amount $3,452.49, payable to Manuel Ruiz and Ana Ruiz and their attorney, JAMES A. DAVIS, II; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 57

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 27, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,

MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated September 27, 1973, from JAMES A. DAVIS, II, to Travelers Insurance Company, P.O. Box 30, Biscayne Annex, Miami, Florida, transmitting specials on Manuel and Ana Ruiz; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 58

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 25, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated October 25, 1973, from JAMES A. DAVIS, II, to Travelers Claim Office, 909 Brickell

Plaza, P.O. Box 30, Biscayne Annex, Miami, Florida, clarifying insurance coverage for Manuel and Ana Ruiz; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 59

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 5, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated September 5, 1973, from JOE L. MOORE, Law Offices of JAMES A. DAVIS, II, to Travelers Insurance Company, P.O. Box 30, Miami, Florida, transmitting claim forms and bills from Westchester General Hospital for Manuel and Anna Ruiz; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 60

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about May 10, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 08612609, dated May 10, 1973, amount $185.00, payable to Dr. M. S. Fox, D.O., 606 West Flagler, Miami, Florida; and draft No. 08612610, dated May 10, 1973, amount $110.00, payable to Dr. M. S. Fox, D.O., 606 West Flagler, Miami, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 61

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 17, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 10435928, dated September 17, 1973, amount $524.00, payable to Westchester General Hospital and Manuel Ruiz, 2500 S.W. 75 Avenue, Miami, Florida; and draft No. 10435929, dated September 17, 1973, amount $420.25, payable to Westchester General Hospital and Ana Ruiz, 2500 S.W. 75 Avenue, Miami, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 62

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 15, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 10449929, dated November 15, 1973, amount $355.00, payable to Manuel Ruiz; and draft No. 10449930, dated November 15, 1973, amount $490.00, payable to Ana Ruiz; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 63

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 7, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated Decem-

ber 7, 1972, from JAMES A. DAVIS, II, to Mr. Milton Poiter (insured), 2106 N.W. 70 Street, Miami, Florida, with copy to State Farm Insurance Company, 14350 N.E. 6 Avenue, Miami, Florida; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 64

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 10, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated July 10, 1973, from JAMES A. DAVIS, II, to State Farm Insurance Company Claim Office, 14350 N.E. 6 Avenue, Miami, Florida, transmitting specials on Bobby Higgs; and offer to settle letter dated July 10, 1973, for Bobby Higgs; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 65

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 15, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated August 15, 1974, from Michael R. Jenks, to Philip L. Font, Esquire, Law Offices of JAMES A. DAVIS, II, 1900 S.W. 3 Avenue, Miami, Florida, transmitting draft No. 119552540Q dated July 26, 1974, amount $1,500.00, payable to Bobby Higgs and Priscilla Higgs, individually, and JAMES A. DAVIS, II, their attorney; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 66

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 7, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated December 7, 1972, from JAMES A. DAVIS, II, to Miss Annette Strachan Tyson (insured), 9125 N.W. 20 Avenue, Miami, Florida, with copy to Travelers Insurance Company, 1000 Brickell Avenue, Miami, Florida, for Thermearl Knight; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 67

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 5, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,

MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of demand dated June 5, 1973, from JAMES A. DAVIS, II, to Travelers Insurance Company Claim Office, 1000 Brickell Avenue, Miami, Florida, transmitting specials for Thermearl Knight Lassiter; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 68

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 3, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated July 3, 1973, from Philip L. Font, Law Offices of Davis & Donovan, to Travelers Indemnity Company, 1000 Brickell Avenue, Miami, Florida,

which transmitted copy of complaint regarding Thermearl Knight; in violation of Title 18, United States Code, Sections 3141 and 2.

COUNT 69

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 21, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated January 21, 1974, from Michael C. Spring, to Philip L. Font, Esq., Law Offices of JAMES A. DAVIS, II, 1900 S.W. 3rd Avenue, Miami, Florida, containing draft No. 10451613, dated November 27, 1973, amount $4,750.00, payable to Thermearl Knight and JAMES A. DAVIS, II; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 70

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 13, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 9087, dated June 13, 1975, amount $1,486.65, payable to Thermearl Knight and JAMES A. DAVIS, II; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 71

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 1, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,

MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated June 1, 1972, from JAMES A. DAVIS, II, to Ms. Lidia Gutierrez Espinosa (insured), 4801 N.W. 6 Street, Miami, Florida, with copy to Allstate Insurance Company, 5950 South Miami Avenue, Miami, Florida, for Jeannette, Julio and Georgina Faes; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 72

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 13, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter (undated) from JAMES A.

DAVIS, II, to Allstate Insurance Company, 5950 Sunset Drive, Miami, Florida, transmitting copies of Dr. Fox' itemized bill for Jeannete Faes and Julio Faes; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 73

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 30, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated November 30, 1972, from JAMES A. DAVIS, II, to Al Carroccia, Allstate Insurance Company, District Claim Office, 5950 Sunset Drive, Miami, Florida, transmitting copy of complaint regarding Jeannette and Julio Faes; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 74

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about December 26, 1972, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated December 26, 1972, from JAMES A. DAVIS, II, to Government Employees Insurance Company, 99 N.W. 183 Street, Miami, Florida, transmitting claim form and medical reports and bills on Jeannette and Julio Faes; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 75

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 5, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,

MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. K2595847, dated March 5, 1973, amount $395.00, payable to Jeannette Faes and JAMES A. DAVIS; and draft No. K2595846, dated March 5, 1973, amount $355.00, payable to Julio Faes and JAMES A. DAVIS, his attorney; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 76

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 5, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated March

5, 1973, from JAMES A. DAVIS, II, to Mr. Ludwig Lotheim (insured), 329 S.E. 3rd Street, Hallandale, Florida, with copy to Allstate Insurance Company, 20450 N.W. 2nd Avenue, Miami, Florida, for Cilia and Lucia and Eddie Lorenzo; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 77

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 22, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated August 22, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 20450 N.W. 2nd Avenue, Miami, Florida, transmitting specials on Cila Lorenzo, Lucia Lorenzo and Eduardo Lorenzo; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 78

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 5, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, three itemized medical bills dated August 15, 1973, August 20, 1973 and August 20, 1973 from M. S. Fox, D.O., of Cilia, Eduardo, and Lucia Lorenzo, respectively; in violation of Title 18, United States Code, Section 1341.

COUNT 79

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 4, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and

fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter containing draft No. 41619361, dated September 4, 1974, amount $2,500.00, payable to Cila Lorenzo and Attorney JAMES DAVIS; draft No. 41619362, dated September 4, 1974, amount $2,500.00, payable to Cila Lorenzo (for Lucia) and JAMES DAVIS; and draft No. 41619363, dated September 4, 1974, amount $2,500.00, payable to Cila Lorenzo (for Eduardo) and JAMES DAVIS; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 80

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 17, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,

MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, an envelope postmarked September 11, 1974, from Law Offices, JAMES A. DAVIS, II, to Allstate Insurance Company, 20450 N.W. 2nd Avenue, Miami, Florida, transmitting release for Cila, Lucia, and Eduardo Lorenzo; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 81

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 3, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated January 3, 1973, from JAMES A. DAVIS, II, to Mrs. Nellie L. Justi

(insured), 3693 S.W. 24 Terrace, Miami, Florida, with copy to Allstate Insurance Company, 5050 Sunset Drive, South Miami, Florida, for George and Marta Lamorena, Marta Franco, Fabiola Franco, Fabricio Franco and Michelle Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 82

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 6, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated June 6, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, South Miami, Florida, transmitting specials on George and Marta Lamorena and Marta Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 83

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 9, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated July 9, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, South Miami, Florida, transmitting Westchester General Hospital record of Marta Lamorena; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 84

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about July 16, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and

for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated July 16, 1973, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, South Miami, Florida, transmitting Westchester General hospital record of Jorge Lamorena; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 85

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 17, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a cover letter dated January 17, 1974, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, South Miami, Florida, transmitting breakdown of dates of treatment by Dr. Fox for George and Marta Lamorena and Marta Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 86

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about January 9, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated January 9, 1974, from JAMES A. DAVIS, II, to Allstate Insurance Company Claim Office, 5950 Sunset Drive, South Miami, Florida, transmit-

ting Westchester General Hospital medical records for Marta Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 87

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 26, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated March 26, 1975, from Allstate Insurance Company, to JAMES DAVIS, Attorney, 2398 South Dixie Highway, Coconut Grove, Florida, transmitting draft No. 41859989, dated March 26, 1975, amount $3,000.00, payable to Fabio and Marta Franco and Attorney JAMES DAVIS; and draft No. 41863361, dated March 26, 1975, amount $6,000.00, payable to Jorge and Marta Lamorena and Attorney JAMES DAVIS; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 88

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about April 2, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a mailing envelope postmarked April 2, 1973, from Westchester General Hospital, certified mail No. 746690, to United Services Auto Association, USAA Building, San Antonio, Texas, which contained copies of hospital bills for Michelle Franco, Marta Lamorena, and Jorge Lamorena; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 89

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about June 6, 1973, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of demand dated June 6, 1973, from JAMES A. DAVIS, II, to Crawford and Company Claim Office, 7333 Coral Way, Miami, Florida, transmitting specials on George Lamorena, Marta Lamorena and Marta Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 90

1. The Grand Jury realleges Paragraphs I through IV inclusive of County 1 of this indictment and incorporates the same by reference herein.

2. On or about June 11, 1975, at Mimai, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,

MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated June 11, 1975, from JAMES A. DAVIS, II, to Arnold & Watts, P.O. Box 928, Riverside Station, Miami, Florida, transmitting specials on Fabricio, Fabiolo, and Michelle Franco; in violation of Title 18, United States Code, Section 1341 and 2.

COUNT 91

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 23, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated September 23, 1975, from Arnold & Watts, to Ralph M. Jones, 2398 South Dixie, Coconut Grove, Florida, transmitting draft No. 1544707, dated September 23, 1975, amount $500.00, payable to

Marta Franco (for children) and JAMES A. DAVIS, II, their attorney; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 92

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about February 25, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated February 25, 1975, from Donald W. Hardeman, Jr., Attorney, to Philip Font, Esq., Law Offices of JAMES A. DAVIS, II, 2398 South Dixie Highway, Coconut Grove, Florida, transmitting draft No. 1590000, dated February 19, 1975, amount $1,200.00, payable to Jorge and Marta Lamorena and Philip L. Font, their Attorney; and draft No. 1590002, dated February 19, 1975, amount $600.00, payable to Marta Franco and Philip L. Font, her Attorney; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 93

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about August 12, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated August 12, 1975, from Ralph M. Jones, Law Offices of JAMES A. DAVIS, to Arnold & Watts, P.O. Box 928, Riverside Station, Miami, Florida, regarding George Lamorena; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 94

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about April 15, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and

fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated April 15, 1975, from JAMES A. DAVIS, II, to Glades Sugar House, P.O. Box 666, Belle Glade, Florida, transmitting specials for Marta, Febricio, Fabiolo and Michelle Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 95

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about October 29, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated October 29, 1975, from Ralph M. Jones, Law Offices of JAMES A. DAVIS, II, to Lincoln National Life Insurance Company, Miami Claim and Service Office, 8700 North Kendall Drive, Miami, Florida, regarding Fabio Franco; in violation of Title 18, United States Code, Section 1341 and 2.

COUNT 96

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 12, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated November 12, 1975, from

JOE L. MOORE, Law Offices of JAMES A. DAVIS, II, to Lincoln National Life Insurance Company, 8700 North Kendall Drive, Miami, Florida, transmitting itemized bills of treatment by Dr. M. S. Fox for Marta, Fabricio, Fabiolo and Michelle Franco; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 97

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about November 17, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated November 17, 1975, from Richard J. Meisner, Lincoln National Life Insurance Company, to Ralph Jones, 2398 South Dixie Highway, Coconut Grove, Florida, transmitting draft No. GJ37282, dated November 18, 1975, amount $639.90, payable to Westchester General Hospital; draft No. GJ37283, dated November 18, 1975, amount $5.00, payable to Fabio Franco; draft No.

GJ37284, dated November 18, 1975, amount $301.70, payable to Westchester General Hospital; draft No. GJ37285, dated November 18, 1975, amount $263.20, payable to Westchester General Hospital; and draft No. GJ37286, dated November 18, 1975, amount $251.40, payable to Westchester General Hospital; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 98

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about September 30, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of representation dated September 30, 1974, from JAMES A. DAVIS, II to Mr. Edwin V. Boles (insured), 3523 Loquat Avenue, Miami, Florida, with copy to State Farm Insurance Company, 7040 S.W. 61 Avenue, South Miami, Florida, for Preston Wellons and Chester Rambo; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 99

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incoprorates the same by reference herein.

2. On or about January 28, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, represention, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY M. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of demand dated January 28, 1975, from JAMES A. DAVIS, II, to State Farm Insurance Company, 7040 S.W. 61st Avenue, South Miami, Florida, transmitting specials for Preston Wellons and Chester Rambo; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 100

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 19, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and

for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a demand letter dated March 19, 1975, from JAMES A. DAVIS, II, to State Farm Insurance Company Claims Office, 7370 N.W. 36 Street, Miami, Florida, regarding P.I.P. lien for Preston Wellons; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 101

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 27, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,

WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter transmitting draft No. 119435222-Q, dated March 27, 1975, amount $4,500.00, payable to Preston Wellons and JAMES A. DAVIS, II, his attorney; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 102

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about February 6, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter of demand dated February 6, 1975, from JAMES A. DAVIS, II, to Aetna Life & Casualty Company Claims Office, 95 Merrick Way, Coral Gables, Florida, transmitting specials for Preston Wellons; in

violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 103

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about March 25, 1975, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated March 25, 1975, from Aetna Life & Casualty, to JAMES A. DAVIS, II, 2398 South Dixie Highway, Coconut Grove, Florida, transmitting draft No. 519260125, dated March 20, 1975, amount $783.69, payable to Preston Wellons and his attorney JAMES DAVIS; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 104

1. The Grand Jury realleges Paragraphs I through IV inclusive of Count 1 of this indictment and incorporates the same by reference herein.

2. On or about April 2, 1974, at Miami, Dade County, in the Southern District of Florida, for the purpose of executing the aforesaid scheme and artifice to defraud and for obtaining money and property by means of false and fraudulent pretenses, representations, and promises, and attempting to do so, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

knowingly caused to be delivered by mail, according to the direction thereon, a letter dated April 2, 1974, to The Florida Bar, 111 Northwest First Avenue, Miami, Florida, from JAMES A. DAVIS, II, with an enclosed charge sheet on Yva Henry, case no. 5564; in violation of Title 18, United States Code, Sections 1341 and 2.

COUNT 105

1. Beginning on or about January 1, 1972, and continuing to the instant date of this indictment, the defendants,

IRVING CURTIS,
JAMES A. DAVIS, II,
ADELA NANCY DEL VALLE,
MORRY S. FOX,
MARY H. HAMILTON,
WILLIAM H. HOLTON,
a/k/a "Shorty",
and
JOE L. MOORE,

in the Southern District of Florida and elsewhere did knowingly and wilfully conspire, combine, confederate and

agree with other persons both known and unknown to the Grand Jury, to commit certain offenses against the United States, to wit: to wilfully and knowingly use and cause the mails to be used in the execution of the scheme and artifice to defraud, and for obtaining money or property by means of false and fraudulent pretenses, representations and promises set forth more fully in Paragraphs I through IV of Count 1 of this indictment, which paragraphs are incorporated by reference herein; in violation of Section 1341 of Title 18, United States Code.

2. All of the said acts of the defendants and their co-conspirators recited in each of the preceding 104 counts of this indictment are herein incorporated by reference and are designated as separate overt acts, done in furtherance of, and to effect the objects of the conspiracy, and in addition thereto, the defendants and their co-conspirators, in the Southern District of Florida, and elsewhere, in the performance of said conspiracy and to effect the objects thereof, did commit the following described separate additional overt acts; all in violation of Title 18, United States Code, Section 371.

OVERT ACTS

1. At a time unknown but following some publicity regarding an investigation concerning defendant JAMES A. DAVIS, II a meeting was held at the law offices of JAMES A. DAVIS, II and defendants JAMES A. DAVIS, II, MARY HAMILTON and JOE MOORE were present. Others in attendance were Anita Abrams, Hortensia Cazo, Jeannette Faes, Margie Lastra and Leyda Pedrosa.

2. On or about February 25, 1973 in Dade County in the Southern District of Florida, defendant WILLIAM HOLTON, a/k/a "Shorty" was the driver of an automobile in which Betty Jean Daniels was a passenger.

3. In approximately June, 1972, in Dade County in the Southern District of Florida, defendant IRVING CURTIS con-

tacted Sammy Kennerly and directed him to the clinic of defendant Dr. M. S. Fox.

4. On or about May 19, 1973, in Dade County in the Southern District of Florida, defendant JOE MOORE met with Edna Mae McDonald in the law offices of JAMES A. DAVIS, II.

5. On or about February 28, 1973, in Dade County in the Southern District of Florida, defendant Dr. M. S. Fox met with Cilia Lorenzo at the offices of The Fox Medical Clinic.

A TRUE BILL

/s/ THOMAS E. THORNTON
Foreman

ROBERT W. RUST
United States Attorney

By: /s/ MARSHA L. LYONS
Marsha L. Lyons
Assistant United States Attorney

By: /s/ J. DANIEL ENNIS
J. Daniel Ennis
Assistant United States Attorney

cb4-4/1-71

APPENDIX E

Record Extract

[Examination of John Finney]

[226] Q. What was said to you and what did you say to Mr. Davis at that time?

MR. ROSEN: Objection, Your Honor, on the grounds of hearsay as to the defendants Del Valle and Dr. Fox.

THE COURT: Approach the Bench, please.

(Thereupon counsel for the respective parties approached the Bench and the following proceedings were had out of the hearing of the jury:)

MR. ROSEN: If Your Honor please, the February 9th, 1977 issue of Criminal Law Reporter at page 20, Criminal Law Reporter—at page 2390 is the recent decision of the First Circuit decided January 21, 1977, in United States v. Petrozzielo (phonetic) which determines that before the Court can permit any hearsay testimony on the theory of a conspiracy, the Court must find from the evidence by preponderance of [227] the evidence that a conspiracy does, in fact, exist under the new rule, Rule 104.

THE COURT: It's not a Fifth Circuit rule, though?

MR. ROSEN: This has just come out in the interpretation of the new Rules of Evidence, Rule 104, and puts the burden on the Court.

The Fifth Circuit not too long ago reversed Judge Eaton for not having ascertained ahead of time that there was, in fact, sufficient evidence of a conspiracy.

I would ask the Court to read this.

THE COURT: I will.

MR. ENNIS: Judge, we have no particular quarrel at this particular time with having just these conversations ad-

mitted against Mr. Davis and your instructing the jury not to have them admitted against anybody else. This is the standard for the Fifth and all other Circuits.

MR. ROSEN: It's incriminatory in many ways and I would ask for a severance. Maybe a proffer of the evidence would assist all of us.

THE COURT: You don't want to bring it in under the co-conspiracy exception to the hearsay [228] rule at this point subject to tying it together at a later date?

MR. ENNIS: We can argue, I suppose, that it is within the conspiracy exception, but I think under an abundance of caution, in regard to this particular conversation which occurred at this particular time, to bring it in solely against Mr. Davis and, of course, Mrs. Hamilton, who is not present today—all it does at this particular time is put Mr. Davis on notice as to what's occurring in his office in May of 1973, at least as late as—

THE COURT: Let's excuse the jury.

(Thereupon the following proceedings occurred in the hearing of the jury:)

THE COURT: Ladies and gentlemen of the jury, we are going to ask you to step back into the jury room for a few minutes while we discuss a legal matter.

(Thereupon the jury retired from the courtroom after which the following proceedings were had:)

THE COURT: The case that you have [229] handed me, Mr. Rosen, is concerning the exception to the hearsay rule based upon the co-conspirator exception.

As you heard Government counsel argue, they are at this point in time asking that the testimony to be admitted—

MR. ENNIS: As long as the jury is out, I may as well argue this. It may as well come under the co-conspiracy exception which the Court can allow into evidence subject to being connected and I think that the next witness that

the Government will put on is going to connect it up, connect it all up pretty well.

The next witness will be rather lengthy. Of course, Mr. Finney's testimony is going to be rather short, as a matter of judicial economy, I would say that we should go ahead and introduce this, although it would confuse the jury—although I'm not sure, the line of cases go to directing the Court to instruct the jury that this is subject to being connected up later.

The point is that if you do instruct the jury that this testimony comes in only against the individual concerned, subject to being connected up [230] when a conspiracy is shown beyond a reasonable doubt to the jury, that would, I think, be a proper cautionary instruction.

We do proffer that the next witness that is going to testify, of which counsel has received the Jencks material on her, and she is not listed on our list of witnesses which Your Honor has, will connect up a conspiracy.

THE COURT: Let's back up. You are trying to get it in under both, the testimony against only Mr. Davis at this point in time and also as an exception to the co-conspirator hearsay rule; is that correct?

MR. ENNIS: That's correct.

THE COURT: All right, Mr. Rosen, what do you have to say about that?

MR. ROSEN: If Your Honor please, I believe this case that I presented to the Court clearly indicates that it cannot be offered at this time, that it would be excludable under the hearsay rule.

I don't know who the next witness is, but certainly I think under the Fifth Circuit Rule at this point—I can't offhand think of the name of the [231] case that Judge Eaton was reversed on, in the past year and a half, two

years—I thought I had it in my file but I don't see it, but the Fifth Circuit, I submit has been tightening up on the admissibility of hearsay statements, subject to being connected up later on in the proof of a conspiracy.

The other leg that the Government desires to stand on, that being offered only as to Davis, I submit is just a mockery, that is, when you tell a jury, "Don't pay any attention to this on behalf of the defendants Fox and Del Valle"; the bell has then been rung and we don't un-ring it. I will object to any testimony of this witness concerning conversations out of the presence of Dr. Fox.

THE COURT: It is my understanding that the order of admission of proof is within the discretion of the trial court and, consequently, it is not reversible error if actual declarations by co-conspirators are admitted before the existence of the conspiracy is established by independent evidence, United States v. Sansone, which was originally a Second Circuit case, cert denied by the Supreme Court, Nelson v. United States, which is a Fifth Circuit decision, 415 F. 2d, 483, and that the Court may admit [232] a co-conspirator's act or declaration subject to motion to strike if independent evidence or proof aliende fails to establish by a fair preponderance of the evidence the conspiracy and the defendant's participation.

Now, therefore, it seems to me as long as the Government is confident that it will reasonably be able to link together and show a conspiracy, at this point in time the Court has the discretion to permit the testimony come in, subject to a motion to strike later, if independent evidence does not establish the conspiracy.

Under those circumstances the Court would be prepared to make a limited charge to the jury which would tell the jury in effect that as to the defendant Davis this could be considered as direct evidence, but as to the other co-defendants I would propose to give them the charge out of Devitt

and Blackmar, Section 71.14, taken from United States v. Wilkinson, which explains the co-conspirator rule.

MR. ROSEN: Your Honor, I might point out that both the Nelson case and the Sansone case were decided prior to the enactment of the new Federal Rules of Evidence and this case that I handed to the [233] Court points out the distinction between the old rules and new rules of evidence, and I would object to even having a limited instruction, Your Honor.

THE COURT: All right. I would like for you to take a look at the limiting instruction. If either side wants to see it, it is directly out of Devitt and Blackmar.

MR. ROSEN: I am familiar with the instruction, Your Honor.

MR. STEPHENS: Is that consistent with the exception, Your Honor?

THE COURT: Yes, take a look at the last page.

MR. STEPHENS: Yes, thank you.

THE COURT: You understand, of course, the Government is being held to this—if you, in fact, don't establish that a conspiracy involves each of these defendants by a preponderance of the evidence, then all of this is going to be subject to a motion to strike in the future. Is that clear?

MR. ENNIS: Yes, Your Honor.

THE COURT: You may bring the jury back in.

[234] (Thereupon the jury returned to the courtroom after which the following proceedings were had:)

THE COURT: Ladies and gentlemen of the jury, the witness has just been asked the question as to what was said to him and by him to Mr. Davis in Mr. Davis' home.

Now, that was obviously outside the presence of the other defendants. At least there is no testimony that any of the others were there.

Consequently, you are instructed that that conversation may be considered by you as direct evidence in the instance of Mr. James Davis, but as to the other defendants, I'm going to give you a limiting instruction that will tell you the circumstances under which that conversation, if at all, may be considered as involving the other defendants, and then you may later determine that in your deliberations and considerations.

When two or more persons knowingly associate themselves together to carry out a common plan or arrangement with the intent either to accomplish some unlawful purpose or to accomplish some [235] unlawful purpose by an unlawful means, there arises from the very act of knowingly associating themselves together with such intent a kind of partnership in which each member becomes the agent of every other member.

So where the evidence in the case shows such a common practice or arrangement between two or more persons, evidences as to the acts done or statements made by one such person is admissible against all, provided the act or acts be knowingly done and/or the statements be knowingly made during the continuance of the common plan or arrangement, and in furtherance of some intended object or purpose of the common plan.

In order to establish proof that such a common plan or arrangement existed, the evidence must show that the parties to the plan or arrangement in some way or manner or through some contrivance positively or tacitly came to a mutual understanding to try to accomplish some intended object or purpose of the plan or arrangement.

In order to establish proof that a defendant or any other person was a party to or a member of such a common plan or arrangement, the [236] evidence must show that the plan was knowingly formed and that the defendant or other person who is claimed to have been a member, knowingly

participated in the plan or arrangement with the intent to advance or further some intended object or purpose of the plan or arrangement.

In determining whether or not a defendant or any other person was a party to or a member of such a common plan or arrangement, the jury is not to consider what others may have said or done, that is to say membership of a defendant or any other person in such a common plan or arrangement must be established by evidence as to his own conduct, what he himself knowingly said or did.

If and when it appears from the evidence in the case that such a common plan or arrangement did exist, and that a defendant was one of the members of the plan or arrangement, then the acts and statements by any person likewise found to be a member may be considered by the jury as evidence in the case, as to the defendant found to have been a member, even though the acts and statements may have occurred in the absence and without the knowledge of the defendant, provided that such acts and statements were knowingly [237] done and made during the continuance of the common plan or arrangement, and in furtherance of some intended object or purpose of the plan or arrangement.

Otherwise, any admission or statement made or act done by one person outside of court may not be considered as evidence against any person who was not present and did not see the act done nor hear the statement made.

An act or statement is knowingly done or made if done or made voluntarily and intentionally and not because of a mistake or other innocent reason.

Now, that instruction will apply to the conversation between Mr. Finney and Mr. Davis. You may proceed.

* * *

[266] (Thereupon a recess was taken after which the following proceedings were had out of the presence of the jury:)

MR. ROSEN: If Your Honor please, since the jury is out, the Government has just handed me a Memorandum of Law and I assume that it has been delivered to the Court.

THE COURT: Yes.

MR. ROSEN: This is regarding the admissibility of certain acts of co-conspirators and observed out in the hall—I see Mrs. Hamilton.

Inferentially I gather that she is the supposed next Government witness, and it is not her basic testimony, Your Honor, although I would urge it with the hearsay as to what went on in the office, in conversation, without a conspiracy having been established—according to the memorandum and according to some of the Jencks material that has been furnished to me—it now appears that Miss Hamilton is prepared to testify about payoffs to prospective witnesses, totally and completely unrelated to Dr. Fox and Miss Del Valle.

Now then, if Your Honor please, reading [267] the cases that they have cited, I should like to call the Court's attention to the distinction.

I do believe that as to Dr. Fox and Miss Del Valle the Government and this Court would be bound by the decisions cited in the first paragraph, Krulewitch, Dutton, and Lutwak.

In addition to that, I would cause the Court's attention to the case of Grunewald, G-r-u-n-e-w-a-l-d, versus United States, a Supreme Court decision, 1957. I don't have the cite with me but it was a nine-nothing decision which summarized and analyzed the Krulewitch and Lutwak case and the admissibility of acts such as this and in the opinion it points out certainly a question of bribery or perjury before a grand jury could not be contemplated by the conspirators in their original conspiracy, and would not be considered in furtherance of the original conspiracy.

I am familiar with the case of United States v. Diaz [sic], a Fifth Circuit case which appears to be primarily relied upon by the prosecution.

In that case, Diaz [sic]—I think, Your Honor, in the Diaz [sic] case the statements to which the Fifth Circuit referred were statements made by alleged co-conspirators to investigating agents that were perhaps deceptive in support of the original tax [268] returns that were filed in that case.

It was an income tax case and they said "Well, these false statements, made by the unindicted co-conspirator and out of the presence of the others, inferentially could be considered in furtherance of the conspiracy to conceal income," which was the foundation of the allegation of the indictment.

It is entirely different than what we have in this case where there is no suggestion, and I'm sure that the Government would not offer a suggestion that Dr. Fox or Miss Del Valle were any part or even aware of any suggestion that witnesses were being contacted, interviewed or offered money.

I submit, Your Honor, that it would be prejudicial and reversible error to permit this testimony to be introduced against Dr. Fox and Miss Del Valle.

If that is the case, I submit that the Government should forego this evidence or else the Court should reconsider my motion for severance which I again renew if the Government is going to offer this.

THE COURT: At the moment I will hear Mr. Ennis.

MR. ENNIS: Your Honor, I believe the memo would speak for itself—with regard to the [269] cases—I think that the crux of all cases would indicate that as long as a conspiracy or declarations or acts are made in furtherance and during the conspiracy, then they are admitted against the remaining co-conspirators whether present or not.

I think that the evidence in this case is going to show that there is an on-going conspiracy, that it continued up until the present.

There is no question that evidence is going to come out during the course of the trial which was already presented during the Abrams questioning which is already a matter of record, that Dr. Fox conspired with, for lack of a better word, with Mr. Davis in creating these false costs that were submitted to the Florida Bar.

That situation occurred as late as March of 1974. I think the testimony will come out that Mr. Davis and Dr. Fox are continuing the present situation that they have already established, that is, Davis to Fox to Westchester and then back to the insurance company.

I think that these payments occurred within the scope of that conspiracy and that in order to make payoffs to these people, of course, the money would have to be generated from defrauding other [270] insurance companies which had—the fraud had originated by Davis to Fox to Westchester.

This is the type of thing which will be prevalent throughout the case.

THE COURT: Well, I don't have anything in front of me at the moment other than that you have made me aware of this, Mr. Rosen, and Mr. Ennis has expressed the Government's position.

Is there any motion of any kind pending at the moment?

I am aware of your position and at the time, when it becomes appropriate, it seems to me then that you should make your motion.

MR. ROSEN: Your Honor, under the Federal Rules of Evidence where counsel sees a problem coming up, the rules permit a preliminary ruling on it and pursuant to that, Your Honor, I would ask the Court preliminarily to bar

the Government from introducing any evidence of attempted payoffs or actual payoffs to any witnesses.

THE COURT: To the extent that any such testimony comes within the scope of Diaz [sic], Rodriguez, and other cited cases in the memo, it will be admitted.

I can't rule on any specific matters [271] unless and until they do occur.

You can make your objections known at that point to answer your question generally, it seems to me like a threshold may be there in view of the cited authorities.

MR. ROSEN: Your Honor, there is no way it could come in under the Diaz [sic] case, under the facts of that case.

I am familiar with that case and, in fact, the indictment in that case alleged that it was part of the conspiracy for the conspirators to make false statements to the agents when it was investigated.

So, therefore, there is just no way it could be controlled by the Diaz [sic] case.

THE COURT: How about Rodriguez?

MR. ROSEN: I'm not that familiar with it, Your Honor.

THE COURT: What about the other cases?

MR. ROSEN: The other cases, Your Honor, are not, I submit, matters that would go to a question of state of mind, for example.

The idea of proof of this—the idea of trying to prove bribery is consciousness of guilt, nothing else.

[272] The fact that in the middle of a narcotics investigation one of the defendants beats up a narcotics agent is not consciousness of guilt but this would be, and that's the only purpose of introducing it when it is not even charged.

THE COURT: I understood Mr. Ennis to say that the evidence would show that it was in furtherance of the conspiracy and during the time of the conspiracy. Is that correct?

MR. ENNIS: Yes, Your Honor.

THE COURT: So it seems to me if it does fall within that scope, it would be admissible.

Now, I have not heard it yet but you have asked me and I would indicate to you that based upon the authorities cited in this memo that at least the threshold question is answered.

MR. ROSEN: Then I would ask the Court in due course to read the Grunewald case.

THE COURT: I shall be glad to.

At this time, if you have made a motion to sever or renew it, I'm going to deny it at this point so that the record will be clear on that.

You may bring the jury back in.

(Thereupon the jury returned to the courtroom)

[Examination of Mary Hamilton]

[303] Q. Miss Hamilton, you have described the procedures that have been used in the office, concerning the bringing in of cases, the receipt of bills from Dr. Fox's office.

Now, when you left in August of 1976, was that procedure still being followed?

A. Yes, it was.

[314] Q. Now, Miss Hamilton, in addition to the payments that you had already described, did you ever make any payment to clients out of the cash fund?

A. Well, they were given—yes, they were given proceeds directly from cash until perhaps two years back when we started giving them proceeds in cashier's checks.

Q. Now, after a client's case had already been settled, did you ever give the client money out of this cash fund?

A. Yes, we did.

Q. Do you recall any particular clients that were paid from the cash fund when this occurred?

A. Preston Wellons is one; Ethel James is one and I believe Cheryl Jackson. There were quite a few.

Q. Miss Hamilton, specifically in reference to Mr. Wellons; approximately when were these payments made?
[315] A. Just before and/or just after he was contacted and talked to by investigators on this matter or going to witness—before the grand jury.

Q. How many payments were made to him and what were the amounts of those payments?

A. Preston, I believe, was three payments, probably fifty, fifty, and I don't know precisely.

Q. Now, Miss Hamilton, during the course of an investigation were you called as a witness in some proceeding in th federal court here?

A. Are you speaking—yes, are you speaking of the grand jury?

Q. Yes, Miss Hamilton.

A. Yes, I was.

Q. Miss Hamilton, prior to appearing before the grand jury, did you receive any instructions?

A. Yes, I did.

Q. And whom did you receive those instructions from?

A. Mr. Davis.

Q. Did you specifically—specifically, did you receive any instructions concerning bonuses?

A. Yes, I did.

Q. And what were those instructions?

[316] A. I was to—

MR. ROSEN: Your Honor, on behalf of Miss Del Valle and Dr. Fox we object to the hearsay, outside of the charges.

THE COURT: The objection is noted and a continuing objection is noted and overruled on the basis of the Court's previous ruling.

The jury is reminded again that we are dealing with the limited exception to the hearsay rule. Go ahead, please.

BY MRS. LYONS:

Q. Miss Hamilton, I was asking you—before you came down as a witness, did you receive any instructions concerning a bonus?

A. Yes, I did.

Q. I believe you stated that Mr. Davis had given you those instructions?

A. Yes.

Q. And what did he say to you?

A. I was not to acknowledge that there was a bonus on the hospital admissions, nor was I supposed to acknowledge that there was a bonus on the specials, letters, which went out, and I was supposed to tell the grand jury it was only on the basis of [317] drafts that came into the office.

I remember this because I was surprised that we were supposed to lie about it.

MR. ROSEN: Your Honor, I object and I move to strike the last remark.

THE COURT: The last remark is stricken, ladies and gentlemen, as not responsive. Please disregard it, ladies and gentlemen.

BY MRS. LYONS:

Q. Did you receive any instructions concerning the medical bills?

A. Yes, I did.

Q. And what were those instructions?

A. I was supposed to say—to lie that the only reason there could be evidence that we requested specific amounts which, you know, would indicate an attempt to reach the threshhold, was because there was an attempt to reach the threshhold for the time being and get the letter and get the specials out into the mail, but supposedly it wasn't so—supposedly the clients were still under treatment so there would be more forthcoming after that point.

Q. Did you receive any instructions concerning the cash drafts?

[318] A. Yes, I did.

Q. And what were those instructions?

A. In fact, with that I received about three conflicting instructions which made it all the more difficult on not being sure how Mr. Davis wanted me to lie.

At one point I was supposed to say that I just gave it all to Mr. Davis, that I didn't know anything about it.

And at another point he said something about "Tell them it was all given to Irv," and that Mr. Davis didn't know

what Irv did with it, and let's see—there were about three lines of—things that I was supposed to tell, none of which was true.

Q. Did you receive any instructions concerning the entries being made on such cash drafts?

A. Instructions concerning the entries?

Q. As to what kind of records were kept concerning the cash drafts?

A. Oh, well, definitely I was supposed to—instructed by Mr. Davis to testify to the grand jury that I made no entries in anything anywhere.

Q. Were there any instructions concerning fees, as to cash drafts?

[319] A. Oh, well, yes. Also I was supposed to have testified to the grand jury—I was instructed to testify that only the ones, the cases on which he took no fee were cashed.

Q. And all of these instructions that you have referred to were given by the same person, is that correct?

A. By Mr. Davis.

MRS. LYONS: I have no further questions.

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[Examination of Preston Wellons]

[556] Q. Now, sir, do you recall appearing before a grand jury on May 13, 1976?

A. Yes, I do.

Q. Did you get a subpoena to appear before that grand jury?

A. Yes, I did.

Q. And after you received that subpoena, sir, what, if anything did you do?

A. I don't know what the subpoena was about and I didn't know what it was for, but it had the man's—that handled my case—name on it and I went to him.

Q. Who was that?

A. To Mr. Davis to get some advice.

Q. At the time you went to him were you paid any money?

A. No, I wasn't paid any money.

Q. Did you receive any money at that time?

A. No, sir.

Q. Do you recall appearing before a [557] federal grand jury on August 3, 1976?

A. Yes, I do.

Q. Did you receive a subpoena to appear before that body?

A. Yes, I did.

Q. What did you do, if anything, after you received that subpoena?

A. I went back to Mr. Davis.

Q. Was anyone else present at the time that you—did you speak with Mr. Davis?

A. Yes, I did.

Q. Was anyone else present other than Mr. Davis?

A. Yes, it was.

Q. Who was that?

A. Curtis.

Q. Were you paid any money at that time?

A. Was I paid any money?

MR. ROSEN: If Your Honor please, the defendants Del Valle and Fox object to this line of questioning as it relates to them and renews the motion for severance.

THE COURT: Ladies and gentlemen of the jury, you are reminded that the testimony that [558] the witness is referring to—as to those defendants who were present and participated in the conversation, it may be considered by you as to those defendants; and as to the other defendants who were not present at the time and who did not participate, you may consider the testimony only if it comes within the exception to the hearsay rule on conspiracy which I previously have instructed you on a couple of times.

The motion of counsel is denied.

BY MR. ENNIS:

Q. Did you receive any money the second time that you went to Mr. Davis' office, Mr. Wellons?

A. Did I receive any money?

Q. Yes, sir.

A. Yes, I asked him for a loan.

Q. Did he give you some money?

A. Yes, he let me borrow fifty bucks.

Q. Did you have an attorney when you appeared both times before the grand jury?

A. Yes, I did.

Q. Did you pay for that attorney?

A. Did I pay for the attorney?

Q. Yes.

A. No, I did not.

[559] Q. How did you get that attorney?

A. How did I get the attorney?

Q. Yes, sir.

A. Mr. Davis gave me a selection of attorneys. He asked me—he said that he knows several and I could pick out any one of them.

Q. Were you told to say anything prior to your appearing before the grand jury on either occasion?

A. Was I told to say anything—no, I wasn't.

MR. ROSEN: Your Honor, is it understood that my objection as to the defendants Del Valle and Fox runs to this line, to the entire line of questioning?

THE COURT: It is a continuing objection; same ruling. You may proceed.

BY MR. ENNIS:

Q. Were you told to say anything by Mr. McMillen, your attorney, or Mr. Davis at either time that you appeared in Mr. Davis' office?

A. By Mr. McMillen?

Q. Or Mr. Davis.

A. No, I wasn't told anything.

[560] Q. Were you told not to talk?

MR. ROSEN: Objection, Your Honor, to the leading and suggestive nature of the question.

THE COURT: Sustained.

BY MR. ENNIS:

Q. When you got to the attorney, Mr. McMillen, what, if any, instructions were given to you at that time?

MR. ROSEN: Objection, Your Honor, to the hearsay.

THE COURT: Are you asking him what Mr. McMillen told him?

BY MR. ENNIS:

Q. Was Mr. Davis present when you obtained Mr. McMillen?

A. No, he was not.

Q. Was Mr. Davis present when you were to obtain Mr. McMillen?

A. No, he wasn't.

Q. Well, how did you get the name of "Mr. McMillen"?

A. How did I get the name of "McMillen"?

Q. Yes.

A. From Mr. Davis.

[561] Q. Did he say anything to you at the time that he gave you the name of Mr. McMillen?

A. Yes.

Q. What did he say?

A. To tell the truth.

Q. Have you been down to Mr. Davis' office on any occasion other than those few times?

A. Yes, I went down.

Q. How many times?

A. I don't remember the times that I have been down to his office.

Q. A number of times?

A. I don't remember.

Q. After the two times when you got your grand jury subpoena?

A. Repeat the question, please.

Q. After you got your grand jury subpoena, on both occasions, on which you appeared before the grand jury and you spoke with Mr. Davis, had you been to Mr. Davis' office after those two times?

A. Yes, I went to talk with him and asked him was I in any type of trouble or anything of that nature because I didn't know what this was all about.

Q. And what did Mr. Davis say?

[562] A. He told me no, I was not in any trouble and just to go ahead and wait to hear from you'all.

Q. Did you talk to Mr. Curtis after that?

A. No, I never talked to Mr. Curtis.

MR. ENNIS: Nothing further, Your Honor.

* * *

[916] [Examination of Harold Duke]

BY MRS. LYONS:

Q. Do you remember appearing before a grand jury here in May of 1976?

A. I do.

Q. Now, a couple of days before you appeared at the grand jury, did you talk to Shorty Holton?

A. I did.

Q. Would you please tell me what happened then?

MR. ROSEN: If Your Honor please, I would object on two grounds.

One is hearsay and the other is the matter that I raised before.

THE COURT: Do you want to approach the Bench?

(Thereupon counsel for the respective parties approached the Bench and the following proceedings were had out of the hearing of the jury:)

[917] MR. ROSEN: Once again, Your Honor, this goes to my objection that, apparently, this is activity which is totally unrelated to the charge contained in the indictment.

I believe they are leading into something that may be considered bribery or a suggestion of withholding of testimony and there is absolutely nothing in the record to date concerning this, and I submit there never will be anything in the record that Dr. Fox knew or Miss Del Valle knew or participated in any such activity.

It is so highly prejudicial that it requires that it either be excluded or a severance be granted.

If we are going to continue with Dr. Fox and Miss Del Valle with this line of questioning, I would ask that the evidence either not be admitted or in the alternative that a severance be granted.

THE COURT: Mrs. Lyons?

MRS. LYONS: The Government has already filed a memorandum of law concerning this type of activity.

There certainly has been other testimony concerning this type of activity during the [918] proceedings. The law is quite clear that the testimony in this particular case as in other instances is admissible; and if the Court wants to give a cautionary instruction similar to that given on the hearsay type testimony, to caution the jury that they cannot find this against anyone until they conclude that there is a conspiracy, then that would be appropriate.

THE COURT: Well, I think we ought to discuss whether or not we have reached the point where there is sufficient

proof aliunde offered so as to no longer require reference to the exception.

It may well be that there is at least as to most if not all testimony—it may well be that there is enough proof already not to require a further instruction of that type, but if it is still under the conspiracy—if it is to prove the object of the conspiracy be concealment and things like that—

MRS. LYON: Yes, Your Honor.

THE COURT: I'm going to overrule the objections and let him answer.

You had better be careful how you go.

MR. STEPHENS: Your Honor, let me add an additional objection. It is obvious that the [919] nature of the testimony to be taken up now comes out subsequent to that which is related in the indictment, and rather than relate specifically to a specific act of concealment, it would, in my opinion, relate to extortion or interference with the orderly investigation of a criminal matter or obstruction of justice, but not concealment of a crime because, if I understand the question, it deals with eliciting testimony relating to a payment made to the witness after the time covered in the indictment.

THE COURT: I think this refers to the Rodriguez case—

MRS. LYONS: Yes, sir. Counsel is mistaken as to the time period. The indictment charges that the conspiracy continued up to the date of the indictment which was, I believe, at the end of August.

This activity is taking place during May of the prior year.

MR. ROSEN: Then, Your Honor, I submit that that is more supportive of our position for the reason that if that took place prior to the return of the indictment and if it were proper to be considered, it could have been or should

have been included as a [920] part of one of the schemes or a part of the conspiracy itself.

I would think that we would have had notice to defend that.

THE COURT: I understand. We have already been into this once or twice previously. I have ruled that it is admissible but some of the witnesses have not really gotten into it too strongly up to now and, perhaps, apparently there is some testimony on it, so I will overrule the objection.

(Thereupon the following proceedings were had in the hearing of the jury:)

THE COURT: You may proceed.

BY MRS. LYONS:

Q. Mr. Duke, I asked you if you recall appearing before the grand jury in May of 1976 and whether or not prior to appearing before the grand jury you had spoken to Mr. Holton.

A. Right.

Q. Would you please tell me what Mr. Holton said to you at that time?

A. Well, it was that Saturday, a Saturday morning, and he called Mr. Ivan Curtis and he called [921] me to the phone.

I talked with Mr. Curtis and Mr. Curtis—

Q. What did Mr. Curtis say?

A. Mr. Curtis asked me, said, "What's wrong?"

I said, "Ain't nothing wrong." He said, "Well, something must be wrong. How about you coming down by the office Monday when you get off from work. What time you get off from work?"

I said, "I get off about three thirty." He said, "How about meeting us down to the office when you get off from work?"

I said, "Yes, I could do that because I come right by there every day when I get off."

So that Monday I got off and I went on to the house. So that evening about six o'clock Mr. Holton came by and he said, "Why didn't you go by and talk with Mr. Davis and them? He's sitting down there at the office waiting on you."

I said, "I'm not going down there."

He said, "Why not?"

I said, "Ain't no time for talking."

I said, "All the talking has done been said."

[922] As a matter of fact, I said, "I have to go down to the grand jury and I'm not going before them people and tell them people no lies. You should have talked to me before now."

I said, "If I have time, I might go by there tomorrow before I go back to the grand jury."

I said, "Other than that, I'm not going."

So he said, "Well, you ought to go down there and talk with him. The way it seems like to me, seems like he talked, he is going to put a little something in your hand or just a little something in your pocket. You ought to go down then and see what the man is talking about."

MRS. LYONS: I have no further questions.

Supreme Court, U. S.
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No. 78-1411

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PETITIONERS

v.

UNITED STATES OF AMERICA, ET AL.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE FIFTH CIRCUIT

BRIEF FOR THE UNITED STATES IN OPPOSITION

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OPINION BELOW

The opinion of the court of appeals (Pet. App. A) is reported at 587 F. 2d 699.

JURISDICTION

The judgment of the court of appeals was entered on January 10, 1979 and a petition for rehearing was denied on February 12, 1979. The petition for a writ of certiorari was filed on March 14, 1979. The jurisdiction of this Court is invoked under 28 U.S.C. 1254(1).

QUESTION PRESENTED

Whether testimony that, in an attempt to conceal a conspiracy, one of the defendants attempted to suborn perjury before a grand jury should have been limited to that defendant.

STATEMENT

Following a jury trial in the United States District Court for the Southern District of Florida, petitioners, James Davis, and others were convicted on 104 counts of mail fraud in violation of 18 U.S.C. 1341-1342 and one count of conspiracy in violation of 18 U.S.C. 371. Petitioner Fox was sentenced to concurrent terms of four years' imprisonment on each of the substantive offenses and to a consecutive term of four years on the conspiracy count. In addition, Fox was sentenced to pay a fine of $500 on each substantive count and a fine of $5,000 on the conspiracy count, for a total fine of $57,000. Petitioner Del Valle was sentenced to concurrent terms of 18 months' imprisonment on each of the substantive offenses and a consecutive term of eighteen months on the conspiracy count. In addition, she was sentenced to pay a fine of $50 on each substantive count and a fine of $2,500 on the conspiracy count, for a total fine of $7,700. The court of appeals affirmed.

1. The indictment charged a conspiracy and a scheme to defraud various insurance carriers, accident victims and the Florida Bar Association between January 1972 and the return of the indictment in August 1976 (Pet. App. 17a-106a) by defendant James Davis, a personal injury lawyer, petitioner Fox, a practicing physician, petitioner Del Valle, who was Fox's secretary, and their associates. Following passage of the 1972 Florida no-fault law which limited auto accident personal injury law suits to cases involving medical bills in excess of $1,000 (I Tr. 122-124), defendant Davis, petitioner Fox, who treated patients referred to him by Davis, and petitioner Del Valle submitted false and inflated medical bills which exceeded the $1,000 limit to insurance companies (II Tr. 283) and induced them to pay over 45 drafts

totalling over $75,000. Each draft, except four, was made payable to one of the following: to Davis, his law firm, petitioner Fox, or Westchester Hospital (owned by petitioner Fox). In some instances, the accidents and medical expenses for which claims were submitted by Davis and bills were furnished by Fox (through Del Valle) were purely fictional (II Tr. 239, 245-246, 291-292). In other cases, petitioner Fox billed the insurance companies for 10 to 20 times the number of office visits the accident victims actually made (see, *e.g.*, II Tr. 392, 397, 399, 402, 403). Altogether, twenty-three witnesses testified that they never made the number of office visits for which the insurance companies were billed. Fox received regular cash payments for his part in the scheme—on one occasion as much as $10,000 in cash (II Tr. 300-301).

Petitioner Del Valle, on her part, regularly cooperated with co-defendant Mary Hamilton's (Davis' secretary) requests for higher bills by preparing inflated bills (II Tr. 286-289; I Tr. 175).

The evidence also showed that the scheme was subject to several investigations throughout its existence. A representative from the local transit authority met with Davis several times in 1973 to discuss the large number of bus accidents Davis was handling. He was particularly interested in 30 of the cases Davis handled and petitioner Fox treated where there was no proof that the victim had been on the bus involved in the accident (II Tr. 238-247). Upon learning of this investigation Davis instructed his employees to contact all the clients and tell them what to say to investigators (II Tr. 310-311; IV Tr. 759).

In the spring of 1974 the Florida Bar Association instigated its own investigation into the practices of

Davis and Fox after receiving a complaint from a former client of Davis (II Tr. 311-312; V Tr. 1005-1008). To explain the expenses of the complainant's case, Davis obtained a false bill for "conferences" from petitioner Fox and sent back a letter to the Bar listing the expenses (II Tr. 312; V Tr. 1008-1009). The former complainant's files, seized during a search of petitioner Fox's office, contained a copy of the "conference" bills together with two hand written notes, one referring to "Mr. Gross-Florida Bar Assn."

As part of the government's case, Mary Hamilton, Davis' secretary, also testified that in May 1976 she was subpoened to testify before the grand jury that returned the indictment and that, before her appearance, Davis instructed her to lie and to construct a false explanation for the office's request for specific medical bills from Fox and for the cashed drafts from insurance companies (II Tr. 315-319). She also said that Davis paid Preston Wellons, a client, after he was contacted by federal investigators (II Tr. 315). Wellons, for his part, testified that Davis loaned him 50 dollars and secured the services of an attorney for him after he received a subpoena (III Tr. 557-562). Harold Duke, another client, testified that before his grand jury appearance co-defendant Irving Curtis, a "runner" for Davis, asked him to talk to Davis before he appeared because "he is going to put a little something in your hand or just a little something in your pocket" (IV Tr. 921-922).

In admitting this testimony over petitioners' objection that it was hearsay and involved an activity occurring subsequent to the conspiracy charged (II Tr. 266-272; III Tr. 559; IV Tr. 917-920), the court gave a limiting instruction to the jury that it could consider such evidence against a defendant not present only if it

found that there was a conspiracy, that such defendant became a member of such conspiracy and that the acts and statements related in the testimony occurred "during the continunce of the common plan or arrangement and in furtherance of some intended object or purpose of the common plan" or arrangement (II Tr. 306-310).

ARGUMENT

Petitioners argue that their convictions should be overturned because the trial court refused to restrict testimony about attempts to suborn perjury before the federal grand jury to co-defendants Davis and Curtis, the persons who made such efforts. Petitioners, who were not mentioned in this testimony, contend that "*Krulewitch* v. *United States*, 336 U.S. 440 (1948), and *Grunewald* v. *United States*, 353 U.S. 391 (1957), specifically limit the admissibility of hearsay declarations by co-conspirators to cases where the declarations were clearly made during the existence of the conspiracy *and* in furtherance of the conspiracy's main . . . object or objects" and that the court below misapplied those cases and Rule 801(d)(2)(E) of the Federal Rules of Evidence (Pet. 11).

The court below examined the record and rejected petitioner's contentions (Pet. App. 9a):

> There are obvious distinctions between the conspiracy here and the one to which the *Krulewitch* holding was applied. The first distinction involves the sequence of events. We are dealing with statements made not after but during the conspiracy's operation. Second, the conspiracy here was not aimed at accomplishing a single objective with a precise moment of termination. This conspiracy had a continuing sequence of objectives. Third, the role of Davis in the conspiracy necessitated that he protect it from

> those investigative agencies which threatened its continuation. He was its shield. His attempts to influence witnesses were not acts of concealment related only to a past objective. They were parts of continuing activity that was essential to and therefore in furtherance of the survival of an ongoing operation. As this court recognized in *United States* v. *Diez, supra,* concealment is sometimes a necessary part of a conspiracy, so that statements made solely to aid the concealment are in fact made during and in furtherance of the charged conspiracy.

We submit that this essentially factual conclusion should not be disturbed.

The evidence fully supports the view that Davis' activities were part of a series of continuing efforts to conceal the conspiracy, including his previous cover-up attempts during the investigations by the local transit association and by the bar association. Significantly, during the investigation by the bar association, petitioner Fox through petitioner Del Valle aided the efforts to conceal by submitting a false bill to the investigators. See *Grunewald, supra,* 353 U.S. at 405; *United States* v. *Mackey,* 571 F. 2d 376, 382-384 (7th Cir. 1978); *United States* v. *Portner,* 462 F. 2d 678 (2d Cir.), cert. denied, 409 U.S. 983 (1972); *United States* v. *Bigos,* 459 F. 2d 639 (1st Cir.), cert. denied, 409 U.S. 847 (1972). Nor was the conspiracy otherwise ended when Davis was attempting to suborn perjury before the grand jury. The

record shows that clients were still being solicited for the insurance fraud scheme in August 1976.[1]

At all events, petitioners are most unlikely to have suffered any prejudice. They were not mentioned in the disputed testimony and the exhibits produced at trial showed that petitioners Fox and Del Valle inflated medical bills on at least twenty-five separate occasions. In addition, the trial court protected petitioners' rights by giving the cautionary instruction, immediately after the objected-to declarations, that the jury must first conclude on the basis of independent evidence that petitioners were members of the conspiracy before considering co-conspirator declarations (II Tr. 308-309, 316). This instruction was repeated in the closing charge, which told the jury that it must conclude that the independent evidence showed beyond a reasonable

---

[1]Petitioners claim the court of appeals incorrectly interpreted the following testimony of witness Hamilton (II Tr. 303):

> Q. Miss Hamilton, you have described the procedures that have been used in the office, concerning the bringing in of cases, the receipt of bills from Dr. Fox's office.
>
> Now, when you left in August of 1976, was that procedure still being followed?
>
> A. Yes, it was.

The procedure concerning "the bringing in of cases" refers to Hamilton's prior testimony that co-defendant Curtis and others were paid for soliciting cases for the insurance fraud scheme (II Tr. 294-297). The "receipt of bills from Dr. Fox's office" refers to Hamilton's testimony that Davis routinely requested bills of specified amounts from petitioner Fox in order to meet the required threshhold amount (II Tr. 286-287, 289-290). Thus, there had been no change in the procedure for the solicitation of clients and the inflation of claims submitted to the insurance companies at the time Hamilton left in August 1976, the same month the indictment was returned.

doubt that petitioners were members of the conspiracy before considering co-conspirator declarations (IX Tr. 2112-2113). In these circumstances, even if the testimony concerning the effort to influence the grand jury witnesses should have been restricted to Davis and Curtis, the error was harmless.

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted.

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IN THE

Supreme Court of the United States

OCTOBER TERM, 1978

No. 78-1411

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MORRY S. FOX, *Petitioners*

v.

UNITED STATES OF AMERICA, et al., *Respondents*

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

---

REPLY BRIEF OF ADELA NANCY DEL VALLE AND MORRY S. FOX

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REPLY BRIEF OF ADELA NANCY DEL VALLE AND MORRY S. FOX

I. The Court's Decision In This Case Should Reaffirm Its Previous Limitations On The Admissibility of Co-Conspirator Hearsay.

In their opening brief Petitioners demonstrated that the Fifth Circuit clearly erred in its application below of the co-conspirator exception to the hearsay rule. That rule strictly limits admissibility of concealment hearsay, such as that which was admitted into evidence against Petitioners, to cases where there is evidence to show that the hearsay was *both* "in the course of" and "in furtherance of" the conspiracy *charged and proved. Krulewitch* v. *United States,* 336 U.S. 440

(1949); *United States* v. *Nixon,* 418 U.S. 683 (1974); Rule 801(d)(2)(E) Federal Rules of Evidence. Respondent's brief in opposition does not address the Fifth Circuit's broad and dangerous expansion of those acknowledged limitations. Instead, Respondent seeks to sustain the court below by characterizing its conclusion as "essentially factual." Respondent's Brief, page 6. We submit that the Fifth Circuit's conclusion was instead essentially fictional, and legally erroneous, in two critical respects:

First, to get around the fact that a conspiracy to conceal (by subornation or otherwise) was neither charged nor proved, and that therefore the subornation attempts were not "in furtherance of" the conspiracy charged, the court below fictionalized a "continuing sequence of objectives." The court's fiction did not require a showing by the Government that the "objectives" of the concealment hearsay were at any time agreed upon by the defendants or anywhere defined in the indictment or evidence. Indeed, the court itself never articulated what the "continuing sequence of objectives" were. Instead, the fictionalized "objectives" provided the vehicle for the court to improperly "find" an objective to conceal. Petitioners submit that this invention of a "continuing sequence of objectives" both ignores and dangerously expands this Court's oft-repeated limitation that co-conspirator hearsay be "in furtherance" of the "main" or "chief" objectives of

[1] This fiction, we submit, might equally support a prosecution attempt to show that petitioners' co-defendants had "put [ ] an incorrigible witness out of the way," *Krulewitch* v. *United States, supra,* 336 U.S. 456 (Jackson, J., concurring specially). Plainly, hearsay evidence of concealment by subornation or by murder should not be admissible unless shown to be in furtherance of the *actual* objectives of the conspiracy charged and proved.

the conspiracy charged. *Krulewitch* v. *United States, supra, Grunewald* v. *United States,* 353 U.S. 391 (1957); *Dutton* v. *Evans,* 440 U.S. 74 (1970); Rule 801(d)(2)(E), Federal Rules of Evidence.

Second, the Fifth Circuit fictionalized an "implied" and "necessary" conspiracy to conceal.[2] Under this fiction, the court below avoided the question of whether the subornation attempts were in furtherance of the main objectives of the conspiracy actually charged, because the court improperly found that these attempts were in furtherance of the "implied" conspiracy to conceal. Similarly, the court's use of an "implied-conspiracy-to-conceal" fiction allowed it improperly to ignore the lack of any substantial evidence that the conspiracy charged was ongoing at the time of the concealment attempts. *Nixon* v. *United States, supra; United States* v. *James,* 590 F.2d 575 (5th Cir. 1979) (*en banc*). As Petitioners have already shown, this Court has condemned the "implied conspiracy" theory of admissibility of co-conspirator hearsay. Brief, pp. 13-16. Petitioners emphasize here that, in addition to its incompatibility with this Court's decisions, the "implied" or "necessary" conspiracy created by the Fifth Circuit also fails because it lacks any *standard* for application. The fatal vagueness of the Fifth Circuit's theory is clear from the following passage:

[2] Petitioners have previously shown that the court's "implied conspiracy" theory rests upon the erroneous conclusion that since co-defendant Davis (the suborner) once concealed *his* deeds from the Florida State Bar Association, a conspiracy to conceal involving Petitioners is "necessarily" implied. There was never any charge or proof, however, that Petitioners agreed to conceal in any fashion, whether by subornation or otherwise. Indeed, there is no evidence to show that Petitioners were aware that the Association had conducted an investigation, much less that Davis had acted to conceal anything.

> "As this Court recognized in the *United States* v. *Diez,* [515 F.2d 892 (5th Cir. 1975)], concealment is *sometimes* a necessary part of the conspiracy, so that statements made solely to aid the concealment are in fact made during and in furtherance of the charge of conspiracy." See Appendix A, p. 9a. (Emphasis added.)

Petitioners submit that the twin fictions of (1) an endless and unarticulated "continuing sequence of objectives" and (2) a "necessarily implied" conspiracy to conceal eliminate the limitations established for the admissibility of co-conspirator hearsay in *Krulewitch* v. *United States, supra,* and carried forward in Rule 801(d)(2)(E) of the Federal Rules of Evidence. As the Second Circuit recently observed in *United States* v. *Lang,* 589 F.2d 92, 100 (1978):

> " 'The adoption of Rule 801(d)(2)(E) and the rejection of the Model Code—Uniform Rule approach [which would have eliminated the in furtherance requirement] should be viewed as mandating a construction of the "in furtherance" requirement *protective of defendants* particularly since the Advisory Committee was concerned lest relaxation of this standard lead to the admission of less reliable evidence.' " Quoting from Weinstein's *Evidence,* ¶ 801(d)(2)(E) [01] p. 801-147 (1977). (Emphasis added.)

II. The Conspiracy Alleged and Proved Was Not Operating At and After The Hearsay Evidence Of Subornation Admitted Against These Petitioners.

The prejudicial evidence that Petitioners' codefendants bribed or attempted to bribe potential grand jury witnesses was initially proffered by the prosecution under two theories: first, as evidence of the consciousness of co-defendant Davis' guilt, and second

under the co-conspirator exception. Brief, App., pp. 108a-109a.[3] With regard to the latter, the prosecution told the trial court it would later "connect up" this evidence with other evidence which it believed would show that the statements were made in the course of the conspiracy charged. Brief, App., 108a-109a, 118a.

The prosecution never succeeded, however, in "connecting up" the hearsay to the charge and the proof, as the following relevant dates show:

1. *January, 1976*: The date of the last overt act charged in the indictment and proved at trial.
2. *April 13, 1976*: Extensive search and seizure carried out at petitioners' place of business.
3. *May, 1976*: Petitioners' codefendants attempt to persuade potential grand jury witnesses to perjure themselves before the grand jury (*i.e.,* the concealment evidence objected to).
4. *August, 1976*: Petitioners indicted.

Thus, between January and August 1976 there is neither a charge in the indictment nor any indication in the evidence that Petitioners or their codefendants committed any overt act related to the conspiracy actually alleged. Lacking such evidence, under this Court's holding in *Fiswick* v. *United States,* 329 U.S. 211, 216 (1946), that the overt acts "averred and proved mark the duration" of conspiracy, the overt acts charged and proved against Petitioners and their codefendants must limit the duration of *this* conspiracy.

---

[3] The second ground was almost an afterthought. As the prosecutor stated: "It may as well come under the co-conspiracy exception . . ." Brief, App., p. 108a.

Respondent, however, claims categorically that the "record shows that clients were still being solicited for the insurance fraud scheme in August 1976." Opposition p. 7 and n. 1. In their opening brief, at footnote 4, Petitioners pointed out that the prosecution presented absolutely no evidence to support this conclusion. Indeed, the witness upon whom Respondent erroneously relies for its conclusion testified that in preparing her testimony with the Government she could not even recall all of the events charged in the indictment, R. Vol. II, p. 347, much less speculate on incidents which were never charged. Further, the extensive search and seizure carried out at petitioner Fox's clinic on April 13, 1976, coupled with Respondent's inability to prove any overt acts occurring after January, 1976, establish that there was no perponderating evidence, much less "substantial, independent evidence," of a conspiracy ongoing after the seizure occurred. See *United States* v. *Nixon, supra,* 418 U.S. at 701 n. 14.[4]

[4] The "substantial, independent evidence" standard alluded to in *Nixon* was adopted as the substantive standard by the Fifth Circuit *en banc* in *United States* v. *James,* 590 F.2d 575 (1979). The single record excerpt quoted by Respondent in its opposition at page 7, note 1, is a vague statement which clearly fails to recite any facts which would constitute "substantial, independent evidence of a conspiracy, . . . enough to take the case to the jury." *United States* v. *Nixon, supra.* In their opening brief, at page 9, footnote 6, Petitioners noted that they contended in the Court of Appeals that the admissibility of the attempted concealment evidence should have been a matter for judicial determination under Rule 104(a) rather than a question of relevance and conditionally admissible under Rule 104(b), Federal Rules of Evidence. In that connection, they observed that the Fifth Circuit itself was entertaining that question *en banc* in *United States* v. *James,* 576 F.2d 1121 (5th Cir. 1978), *motion for rehearing en banc granted* (August 7, 1978). On February 12, 1979, the Fifth Circuit *en banc* decided *James,* 590 F.2d 575, and confirmed that the trial court must determine the admissibility of co-conspirator hearsay before it is heard by the jury and may admit that evidence only where there is substantial, independent evidence to show that the hearsay was both in furtherance of and in the course of the conspiracy alleged. 590 F.2d at 3260-3261. While the Rule 104(a) determination was made prospective, Petitioners contend that the standard of admissibility merely confirmed what this Court had said (in dicta) in *United States* v. *Nixon, supra.* In any case, even under the lower standard of perponderance, Respondent cannot show that the hearsay evidence of subornation was in furtherance and in the course of the conspiracy charged and proved.

Perhaps even more significant, during the instruction conference prior to submitting the case to the jury the *prosecution* requested that the jury be instructed that the concealment evidence could be considered only as evidence of Petitioners' codefendants' consciousness of guilt under Rule 803 of the Federal Rules of Evidence. (R. Vol. 10, p. 2089). This request reflects the prosecution's admission that it had failed to show how the proffered concealment evidence was in furtherance of and in the course of the conspiracy charged and proved. In addition, this admission by the prosecution contradicts Respondent's contention here that there is record evidence to show that the conspiracy was in operation at the time of the concealment attempts.

Petitioners contend with respect to the duration issue that the prosecution's misgivings were correct; that the prosecution failed to "connect up" the concealment evidence with any proof that the conspiracy lasted through the period of attempted concealment; and that Petitioners' counsel in the trial court below was unequivocally correct when he observed that the concealment information (available to the prosecution months before the return of the indictment but

produced to Petitioners' counsel only moments before its presentation at trial), ". . . should have been included as a part of one of the schemes or a part of the conspiracy itself. . . ." if the Government intended to convict Petitioner with such evidence. Brief, App., pp. 114a. Having failed to allege it or prove it, Respondent should not be allowed to condemn Petitioners with it.

III. The Erroneous Admission Of The Concealment Evidence Was Prejudicial To Petitioners.

In their opening brief, at Appendix E, pp. 107a-131a, Petitioners have set forth the evidence of subornation and attempted subornation of grand jury witnesses undertaken by Petitioners' codefendants. Respondent in its opposition brief at p. 7, says that "[a]t all events, Petitioners are most unlikely to have suffered any prejudice" as a result of this evidence having been admitted for consideration against them.[5] Our opening brief demonstrates in detail why the improperly admitted concealment hearsay produced these petitioners'

[5] The legal issues presented by their Petition do not require or permit detailed reply to the factual inaccuracies recited in Respondent's Opposition, which seeks to avoid those issues by coloring the facts in favor of its backpeddling theory of "harmless error." Petitioners do wish to point out, however, that the Government's case depended on exploiting Petitioners' legitimate association with co-defendant Davis; that Mary Hamilton (the Government's chief witness) testified that she was unaware of any receipt by Fox of any "cash payments"; that the $10,000 "cash payment" was actually repayment of a preexisting medical bills; and that Petitioner Del Valle did *not* "cooperate" with her, but instead *refused* several requests by Ms. Hamilton to "inflate" medical bills. *Cf.*, Respondent's Brief, pp. 2-3, *with* R. Vol. 2, pp. 338-355. Further, the Florida State Bar Association investigated the practices of co-defendant (and concealer) Davis, *not* the practices of Dr. Fox. Indeed, the record does not show that Dr. Fox was ever even *aware* of the Association's investigation of co-defendant Davis. *See* footnote 2, *supra*.

convictions. Brief, pp. 19-20. Plainly, such blatant jury-tampering as the hearsay revealed must have weighed heavily on the minds of the jurors judging the innocence of these Petitioners, particularly since the government's case against them rested almost exclusively upon Petitioner's prior (and legitimate) business association with the co-defendant who attempted the subornation.

To reach its "harmless error" conclusion, Respondent ironically relies upon the fact that Petitioners were "not mentioned in the disputed testimony. . . ." Opposition Brief, p. 7. Petitioners submit that it is precisely because they were *not* mentioned that the testimony is inadmissible against them and particularly prejudicial to them. Indeed, it is precisely because Petitioners had no role in or reason to anticipate subornation attempts that they endeavored to exclude this evidence from the jury's consideration in determining their innocence in the conspiracy actually charged. The instructions given by the trial court allowed the jury to consider this damning concealment hearsay evidence against these Petitioners regardless of the fact that they had not been mentioned in or connected with the disputed testimony.[6] Finally, the prosecutrix in her argument for the conviction of Petitioners made re-

[6] Respondents' opposition seeks to leave the impression that the trial court gave limiting ("cautionary") instructions with regard to the use of the co-conspirator hearsay evidence to which Petitioners repeatedly objected at trial. The instructions, however, were the stock instructions which simply required the jury to first conclude that Petitioners were members of the conspiracy charged before considering the co-conspiratory declarations. Plainly, if the co-conspirator declarations themselves were not in furtherance of or in the course of the conspiracy charged and proved, this instruction itself should not have been given.

peated references to the concealment hearsay. (R. Vol. X, pp. 1909, 1930-1931).

Petitioners submit that the hearsay evidence of subornation "conditionally" admitted here was erroneously admitted; was never connected up; condemned these Petitioners as co-suborners in the eyes of the improperly-instructed jury; and gives rise to grave doubt as to whether that testimony had a "substantial influence in bringing about" the jury's verdict. *Krulewitch* v. *United States,* supra, 336 U.S. at 444.

CONCLUSION

The Petition for Writ of Certiorari should be granted.

Respectfully submitted,

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